



JAFL Litigation Funding Partners Limited

Offer of 5,000,000 new ordinary shares

Offer to:

**Feltex Claimants and other Crowdfunding
Investors and to Wholesale Investors**

Platform Manager to the Offer:

Collinson Crowdfunding Limited

www.ccfl.co.nz

Opening Date:

1 May 2020

Updated:

24 June 2020 & 4 July 2020

Closing Date:

30 September 2020

Directory:

Directors of the Company: Anthony John Gavigan +64 21 326272
Logan Granger +64 27 283 8331

Registered Office of the Company: c/- Johnston Associates, 202 Ponsonby Road,
Ponsonby Auckland 1011, +64 9 361 6701

Lawyers to the Company: Lowndes Limited, Auckland (Partner: M G Anderson)

Important defined terms:

Company: JAFL Litigation Funding Partners Limited

Offer: an offer being made by the Company to investors of a minimum of 500,000 and an initial maximum of 5,000,000 new ordinary shares in the Company for a price of \$1.00 per share

JAFL: Joint Action Funding Limited; **JAFL Agreement:** the Feltex Investigation, Management and Funding Agreement between JAFL and the **Claimants** as approved by the High Court in 2010 and amended in 2011; **Resolution Sums** “Resolution Sums” and **Project Costs** “Project Costs” as defined in the JAFL Agreement

Claimants: the 3,639 Houghton-led claimants in *Houghton v Saunders & Others* (CIV 2008 409 348) and related litigation (the **FeltexClaim**). The **Defendants** in the FeltexClaim comprise TEC Saunders, SJ Magill, JM Feeney, CE Horrocks, PD Hunter, Peter Thomas, J Withers (First Defendants); Credit Suisse Private Equity Incorporated, 11 Madison Avenue, New York, NY 10010, USA (an Issuer) (Second Defendant); Credit Suisse First Boston Asian Merchant Partners LP (Vendor of 149m shares in Feltex Carpets Limited (**Feltex**) IPO at \$1.70 per share on 2 June 2004) (Third Defendant)

AIG: AIG Insurance New Zealand Limited (CN31995589); **AIG policies:** the 2004 Feltex IPO and directors’ and officers’ policies sub-underwritten by Chubb Australia and ors insuring the **Defendants** or some of them

JAFL’s Co-Funders: HLIF Limited Partnership (**HLIF LP**); **JAFL’s NZ Co-funders:** Supreme Court Funders (**SCF**) and Fore Golfers Limited (**FGL**)

Cover:

The Company’s original logo was created by Georgia Wyatt and Waimarie Dashper, both of Warkworth. It is based in part on a design by Tara Lemana, of Kapiti, who created the internal stylised Koru and Mango Pare, which is the hammerhead shark symbol, representing tenacity and refusal to give up in the face of adversity. The Mere shape represents our being a New Zealand business, and one involved in dispute resolution. The Mere was used in hand to hand combat to club opponents. The Mere has been combined with the Hei Matau, a Maori fish hook symbolizing an important resource for all New Zealand. The Hei Matau signifies abundance and plenty, strength and determination. It is believed to bring peace, prosperity and good health. It is a device for catching good luck and energy.



JAFI Litigation Funding Partners Limited (the Company)

OFFER UPDATE- 4 JULY 2020

The update on 24 June 2020 below has been amended to clarify the closing date for the offer. **The closing date is 30 September 2020**, subject to the offer meeting conditions including that the minimum funding target of \$500,000 is reached (see the 24 June update for more information). **The offer may be closed earlier** - the Company is targeting 10 July to raise sufficient funds and to meet other conditions.

The original 24 June 2020 update below referred to an earlier potential partial close and further funding being sought under the offer. **The Company confirms in the amended update below that there will only be one closing date, 30 September 2020 or earlier.**

OFFER UPDATE- 24 JUNE 2020

Closing date of Crowdfunding Offer extended to 30 September, 2020

The letter to FeltexClaimants dated 8 January 2020 and relevant minutes issued by the Court in March and April 2020 were made available on the Offer Documents tab at <https://www.ccfi.co.nz>. These documents form the background detailed in **Appendix 1**, which led to the Offer and then a Court hearing on May 22, 2020.

The Company updates these developments since its Offer was made on 1 May 2020. The Offer dated 1 May 2020 should now be read in conjunction with this update.

The Company wishes to raise the \$500,000 minimum under the Offer by 10 July 2020 but the Offer closing date has been extended to 30 September 2020 to enable that target (or a higher raise) to be achieved. The offer may be closed earlier.

This Offer Update concerns the Company's existing and proposed investments in the FeltexClaim, *Houghton v Saunders* CIV2008-409-348.

The steps required to enable Stage Two of the FeltexClaim to proceed were settled by the decision of Justice Dobson dated 22 May 2020 (the **decision**). A pdf copy of the decision can be found on the Updates tab on the Offer page.

It is discussed in **Appendix 2**.

You are strongly advised to read the 22 May 2020 decision and each of the specific risk warnings set out in this Offer Update.

The decision set out two requirements that must be fulfilled by 13 July 2020 or the FeltexClaim by 3,639 claimants seeking \$100 million, plus the same again in interest, plus costs will be struck out the following day (the "**Orders**"). The requirements are that, by 13 July 2020:



- The claimants provide the required \$1,650,000 Security for Costs (paragraph 92(a) of the decision)
- Senior counsel for the claimants confirms that, in his opinion, the claimants are adequately resourced to prepare for and present all aspects of their stage two claims (paragraph 92(b) of the decision).

The decision has been appealed because that timeframe may be unfairly short given delays caused this year by COVID-19 restrictions. The nature of the appeal is discussed below in the Security for Costs Proposed section

This Offer Update clarifies what is now required and explains some new and updated risks in investment under the Offer.

Risk Warning: You are reminded that:

- Equity crowdfunding is risky.
- Issuers (companies issuing shares) using Collinson Crowdfunding’s facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks.
- You may lose your entire investment, and must be in a position to bear this risk without undue hardship.
- New Zealand law normally requires people who offer financial products to give information to investors before they invest.
- This requires those offering financial products to have disclosed information that is important for investors to make an informed decision. The usual rules do not apply to offers by issuers using Collinson Crowdfunding to raise funds. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.
- Ask questions, read all information given carefully, and seek independent financial advice before committing yourself to any investment.

Reason for the Offer

The reason for the Company’s Offer is to provide funding so the Stage Two compensation hearing in the FeltexClaim can proceed late 2020 or early 2021. In order to do this \$330,000 of the cash to be raised under this Offer will be paid by the Company to Stage Two Guarantee Limited as a guarantee fee. Stage Two Guarantee Limited will give a guarantee to the Court for \$1,650,000.

The Company’s investment will be rewarded with a fee of \$990,000 (a gross profit before tax to the Company of \$660,000) as long as there is a compensation award of at least 13 cents per share (**cps**) paid to the Feltex Claimants plus interest and costs from the Stage Two proceedings. This process may take several years to complete. This minimum 13cps plus interest and costs outcome is defined as Stage Two “**Success**” for the purposes of this Offer Update. The scenarios that may unfold are



uncertain and not risk free so you may not receive any return for your investment. The scenarios are detailed below and in the table which is repeated in **Appendix 4**.

Offer conditions

The offer is now conditional on the following conditions:

- A minimum of \$500,000 being raised under the Offer;
- The Company having a legal opinion from the Company's lawyer that there is an effective and binding agreement amongst Eric Houghton, his solicitor, the Houghton led claimant committee, the NZ Co-funders, the Company, Stage Two Guarantee Limited and JAFL (including any necessary confirmation of JAFL's accrued rights in which the Company now participates) that the funding solution set out in this Offer is approved.

Security for Costs Proposal

In response to the Orders' threat of strike out on 14 July 2020 of the FeltexClaims and any prospect of claimants' receiving compensation, leading claimants, business people and professionals have now committed in principle to provide the \$1,650,000 Security for Costs required for Stage Two to proceed.

In summary, Stage Two Guarantee Limited (the **Guarantor**) will guarantee the Security for Costs of \$1.65m in return for a fee of \$330,000 which will be paid by the Company from the proceeds of the Offer.

On Success, the Company will be paid in priority from Resolution Sums a reward of \$660,000 (200%) on top of the Company's proposed cash investment of \$330,000.

The proposed shareholders of the Guarantor include Eric Houghton, IL and NA Hamilton, Sir Paul Collins' Active Equity Holdings Limited, Anthony Walshe, FGL, Craig Anderson, Logan Granger, and the Business Integrity Trust. They will subscribe for their share of the guarantee liability. Further details are at **Appendix 3**.

The proposed security for costs solution follows recent suggestions by the defendants and the Court, in its minute dated 2 March 2020, that it was in the hands of claimants to share the security for costs risk amongst themselves.

That costs solution is not yet approved as the means to meet the security for costs required by the Court. This proposed solution requires the reasonable agreement of the Feltex defendants and acceptance by the Court by 13 July 2020. If this does not occur, or the precautionary appeal filed is unsuccessful, the FeltexClaim proceeding will be struck out on 14 July 2020. The effect of this for investors is set out in the first Table below.

The level of security for costs to be provided by Stage Two Guarantee Limited will be capped at \$1,650,000. In the Offer at Appendix A 10 (c) it contemplates a higher level of \$2,580,000 as security for costs. The market cost of providing that additional guarantee (above the \$1.65m level) cannot currently be justified. This means that some \$930,000 of stage one costs recoveries will remain unpaid by the defendants for now.



Important Note:

The Company will use proceeds from the Offer to fund appeals to endeavour to have the proposed guarantee approved by the Court as security for costs. This was not contemplated when the offer was made on 1 May 2020. If the appeals are not successful it will be unlikely that the Company will be able to recover your full investment - any eventual return you receive will be reduced by the offer costs (which were disclosed on 1 May 2020) and as well as other costs including the costs of the appeal.



Given the history of the proceeding, a precautionary appeal has been filed on 19 June 2020 by Eric Houghton appealing the strike out order on grounds including that the Orders:

- do not fairly balance the competing interests of justice and the balance of convenience should instead favour the Feltex Claimants who have been out of pocket since they were misled in 2004 as described by the Supreme Court refer **Appendix 1**.
- require unnecessarily tight timeframes within the context of past and continuing restrictions posed by the Covid-19 Public Health Response Act 2020.
- suggest a Stage Two trial with overseas witnesses which cannot realistically proceed this year - while outbreaks of Covid-19 continue to flare up in Australia and Covid-19 remains out of control elsewhere overseas.

Risk Warning:

The proposed security for costs solution is not guaranteed to be successful. Key risks include that:

- The formalisation of commitments from the proposed shareholders of Stage Two Guarantee Limited is still in progress and is subject to obtaining those commitments in writing in agreed form.
- The Court in its 22 May 2020 judgment expressed concerns about JAFL meeting costs orders noting that “Since the security for costs order was made, there have been a number of assurances as to compliance with it, none of which have been fulfilled. ...The pattern is sufficient to justify a healthy level of scepticism that [JAFL] can perform its obligations as funder to arrange security for costs and to fund pursuit of the stage two claims.”
- It is noted however the security for costs solution arranged by JAFL and the Company is to be provided by leading individuals named above.
- The approval of the Court and agreement of the defendants is required for the proposed security for costs solution to be effective. The Company has not obtained a legal opinion on the whether the proposed solution would be approved by the Court but there is a risk that it will not be approved by the Court.
- However, the \$330,000 will not be invested until the proposed solution is approved.
- As an investor your funds will be used to fund any required appeals to have the costs solution approved. If the solution is not approved you will lose part of your investment including funds used to pay for this offer and for any required appeals.
- The appeals may further delay hearings in the FeltexClaim.



Conditional Investment by the Company in the proposed solution

JAFI Litigation Funding Partners will contribute to the \$1.65m Stage Two Guarantee Limited solution by paying a \$330,000 underwriting fee out of its Collinson Crowdfunding platform cash raise.

This investment is conditional on:

- the terms of the proposed guarantee being accepted by the Court
- a minimum amount of \$500,000 being raised by the Company for allotment to proceed
- the first ranking priority of the repayment of the Company's investment and the return on it being agreed by the respective NZ Co-funding parties

If the above conditions are not able to be met, funds raised under the Offer will be returned to investors (likely by way of capital repayment) less any costs incurred to that point. Refer to the table below and the notes.

The Company wishes to raise the \$500,000 minimum capital under the offer by 10 July 2020. However, the Offer closing date has been extended to 30 September 2020 to enable that target (or a higher raise) to be achieved. The offer may be closed earlier.

THIS TABLE UPDATES THE TABLES AT PAGES 8 & 16 OF THE OFFER and those tables should be read in conjunction with the table set out below

Use of funds – Updated for mid-case scenario

Tentative start date for use of funds – Post Crowd Funding – aiming for approximately 10 July 2020 but may be as long as 30 September 2020

*All figures exclude GST	Minimum 500,000 Ordinary Shares	Mid case 1,000,000 Ordinary Shares
Funds raised at \$1 per share	\$500,000	\$1,000,000
Capital raising costs	(\$50,000)	(\$100,000)
Net funds raised	\$450,000	\$900,000
Available for investment in Feltex Claim Stage Two litigation costs*	\$70,000	\$500,000
Payment to Stage Two Guarantee Limited for security for costs solution	\$330,000 ⁽¹⁾	\$330,000
Company's working capital**	\$50,000	\$70,000
Total	\$450,000	\$900,000

Notes:

- (1) Proposed payment to Stage Two Guarantee Limited for provision by it of court ordered \$1.65m security for costs for Stage 2 of the FeltexClaim on agreed terms.



- (2) The amount available for investment in litigation costs* (\$70,000) and some of the working capital** (\$50,000) may be applied if required to appeals. An unsuccessful appeal to the Court of Appeal is likely to cost about \$100,000. This may reduce the amounts available for other investment and working capital.

If the agreement described in note 1 is not reached the Company will not invest in the proposed solution.

If the proposed solution is not accepted by the Court (including after any appeal) funds raised by the Offer and allotted will be returned to investors in the Offer less the Capital raising costs and the costs of any appeal (see note 2).

Risks and possible returns from providing the proposed solution

Because of the additional risks described above, the return payable to the Company on success, out of FeltexClaim Resolution Sums, for providing this proposed solution has been increased from \$330,000 to \$660,000.

That \$660,000 potential return on the proposed investment is payable to the Company out of first priority payments received to the extent the FeltexClaim is ultimately successful and achieves recovery for the Feltex IPO investors of at least 13cps of claim (71 million shares claimed for) plus interest and costs.

There is currently no agreement between all the funders now participating as to priorities to those claims. Agreement in writing to establish that priority is required amongst Eric Houghton, his solicitor, the claimant committee, NZ Co-funders, the Company, Stage Two Guarantee Limited and JAFL, including any necessary confirmation of the priority of JAFL's rights in which the Company now participates in return for the issue of three million of its shares. If such agreement is not reached the Company will not invest in the proposed solution. However the Company considers there is a high level of commonality amongst the entities involved and a common purpose.

JAFL advises the Company that under the JAFL Agreement it can bind JAFL's overseas co-funders (HLIF LP) in order to deliver the proposed solution to satisfy the Orders for the benefit of both the FeltexClaimants and JAFL. This is because no rights flow to HLIF LP except through JAFL under the 2011 Investment Agreement between them. That Investment Agreement is subject to the JAFL Agreement. However there is a risk that HLIF LP will dispute these respective rights and the order of priorities settled as anticipated above, which may delay any return to investors.

If the proposed solution is not accepted by the Court (including after any appeal) funds raised by the Offer and allotted will be returned to investors in the Offer, less the Capital raising costs and any appeal costs.

The timeframe for any such returns remains uncertain. In the Offer, the expectation of timing for resolving the FeltexClaims at Stage Two has been described as at least by 31 March 2023.



Risk Warning:

There is a risk that you will lose some or all of your investment. Any potential returns over and above your investment depend on a number of contingencies including that the FeltexClaim is ultimately successful and a significant number of claimants are awarded at least the Measurement of Loss damages* plus interest and costs. (*refer Appendix 1 for an explanation of Measurement of Loss damages)

Risk Warning:

The following financial information is based on a successful claim that results in significant damages awards to a significant number of Feltex investors, which is subject to a number of significant risks including:

- The defendants are well-funded and are likely to appeal any adverse judgments.
- Whether the claimants are entitled to any recovery is still to be determined and there is no guarantee that a Court will find in their favour. The returns noted below are tentative and there is a risk they will not arise.
- The claimants may not have sufficient funds to complete all aspects of the proceedings particularly if there are on-going appeals.
- Key man risk, reflecting that Tony Gavigan is the key to the on-going appeal process.
- As noted above, there are no fixed agreements among existing funders as to priority so there may be disputes and delays, and actual returns may be subject to the resolution of any disputes.

THIS TABLE UPDATES THE TABLE AT PAGE 22 OF THE OFFER and that table should be read in conjunction with the table set out below

Updated - Financial Information - Year 3 (Financial year ending 31 March 2023)

By this stage, JAFL and the Company believe that the compensation from the FeltexClaim (if any) should be settled, having been through all possible appeals. Assuming compensation is awarded to the Claimants, the Company currently believes enforcement against AIG should be straightforward as long as it remains solvent in New Zealand. Payment of its share of Resolution Sums to the Company and/or JAFL could result in the following gross cash flows within the next 3 years in the minimum and mid-case capital raising scenarios:

(Table continued on next page)



THIS TABLE UPDATES THE TABLE AT PAGE 22 OF THE OFFER and that table should be read in conjunction with the table set out below

Updated - Financial Information - Year 3 (Financial year ending 31 March 2023)

* All figures exclude GST and income tax	Minimum 500,000 New Ordinary Shares Issued	Mid-case 1,000,000 New Ordinary Shares Issued
Gross fees from investment In Litigation Projects including FeltexClaim appeals	\$70,000	\$500,000
Gross fees from providing Cash Backed security for costs solutions or ATE premiums	\$660,000	\$660,000
Potential realisation of profit on JAFL entitlement acquired from issue of 3,000,000 shares to JAFL	\$3,000,000	\$3,000,000
Total	\$3,730,000	\$4,160,000
Gross Earnings per share Before Tax including 3,000,000 Shares held by JAFL	\$1.06	\$1.04

Note: The pre-tax projections in the table above have been calculated based on the assumptions made as set out in the Offer as updated and based on the minimum and mid-case amounts of \$500,000 and \$1,000,000 respectively being raised by the initial Offer, and the issue of 3,000,000 shares to JAFL. These projections do not take account of the impact on earnings per share of any shares being issued up to a total of 5,000,000 in the initial Offer, or in any subsequent Offer in the case of an oversubscription. The Offer closing date has been extended to allow further subscriptions.

The above table reflects the maximum amount that investors in the Offer may receive out of the Company's investment in the Feltex Claim. This is achieved on Success, i.e. if the Court awards a minimum compensation of 13cps times 71 million shares of Feltex Claim plus estimated interest and costs (say, \$23.4m, see Table below and in Appendix 4). The Company does not participate in any higher awards to the Feltex Claimants. There is a risk that no claims will be successful or the minimum compensation award will be less than 13cps plus interest in which case Investors will receive less than the full amount of the return in the table above.

FeltexClaims may not succeed in which case returns may be zero.



Remaining Variables in the Feltex Claim

The Supreme Court confirmed in 2018 that the forecast operating revenue for Feltex for the financial year ended 30 June 2004 (FY04) was an untrue statement and that the untrue statement was capable of causing loss. This established part of the claim but the investors also had to show that they had both (1) invested on the faith of the prospectus and (2) had suffered loss by reason of the untrue statement. Those two elements are the subject of the Stage Two hearings for which the security for costs is required.

To **succeed at the higher level of a full refund** the claimants will have to prove that they would have reversed their investment decision had they known the true facts (see **Appendix 1**).

In both cases the claimants will seek to rely on expert evidence of Mr Greg Houston, an economist. They will argue they would have inquired if they had known the truth and would not have bought or converted bonds into Feltex IPO shares worth less than \$1.57. In a recent affidavit Greg Houston stated that, on the basis of a revenue shortfall of \$9 million as at 2 June 2004 for the fourth quarter of FY04:

- (a.) The Measurement of Loss as defined by the Supreme Court decision [2018] NZSC 74 likely falls in the range of 13cps to 34cps, excluding interest since 2004.
- (b.) The upper bound Measurement of Loss is 53cps, excluding interest since 2004.

The lower bound 13cps would likely lead to investors in the Offer making a return. However, both Mr. Houston's evidence and his revised estimate of loss will have to be accepted by the Court and that is uncertain.

Risk Warning:

For investors in the Offer to receive any return they are relying on the Courts concluding (after all appeals) that the Feltex investors invested on the faith of the prospectus and suffered a loss by reason of the untrue statement. There are still significant hurdles to that outcome including that the Court will have to accept and approve the expert evidence of the actual loss. The defendants will likely vigorously dispute these matters.

Priority to any returns

Any return is contingent on a successful outcome of the FeltexClaim.

Returns on its cash investment by the Company and returns on the guarantee provided by Stage Two Guarantee Limited will be paid with first priority out of Resolution Sums available to Houghton, the Houghton led claimants and JAFL.

It is a condition of the proposed cash investment by the Company in the FeltexClaim Stage Two that the ranking for the Company's returns sits alongside the previously agreed first priority ranking agreed in 2019 amongst JAFL, FGL and the SCF funders.



This must be agreed with the Company in writing by them and other NZ Co-funders (refer above, and page 6 of the Offer), Eric Houghton, his solicitor, the Feltex claimant committee, Stage Two Guarantee Limited and JAFL. For the sake of completeness it is noted that HLIF LP will not be a party to the priority agreement upon which the offer is conditional; but it is intended that the effect of the priority agreement amongst the parties who have funded the Feltex Claim since 2016 will be that any dispute between JAFL and HLIF LP will not affect the returns to the Company on its existing and proposed investments in the Feltex Claim.

This is possible because HLIF LP has no rights except through JAFL and because the JAFL Agreement prevails over JAFL's 2011 Investment Agreement with HLIF LP. However there is a risk that HLIF LP will dispute these respective rights and the order of priorities settled as anticipated above, which may delay any return to investors. If no suitable agreement as outlined above can be reached amongst the parties (excluding HLIF LP) the proposed investment will not proceed.

**Obligation to confirm that claimants are funded for their stage two claims
(Paragraph 92(b))**

A condition that must be met by 13 July 2020 to avoid the FeltexClaim being struck out is that senior counsel for the claimants must confirm that, in his opinion, the claimants are adequately resourced to prepare for and present all aspects of their Stage Two claims.

The Company is relying in part on the proceeds of this capital raise. For this reason, Houghton has appealed the time constraints applied by the Orders and the Company has extended the closing date of the Offer to 30 September 2020, as a \$500,000 minimum raise may not be sufficient. In addition, JAFL's recently broadened FGL facility, net of reallocations to the Stage Two Guarantee solution, stands at \$243,000 available for Stage Two court costs. Other contributions to Stage Two costs may be needed by JAFL and other solutions may be devised. The Company has not yet confirmed with senior counsel whether those amounts and timelines will be sufficient to enable senior counsel to provide that confirmation.

Risk Warning:

- The FeltexClaim will be struck out if senior counsel for the claimants cannot confirm that, in his opinion, the claimants are adequately resourced to prepare for and present all aspects of their stage two claims.
- The Claimants have not verified that they have sufficient funds at this stage for senior counsel to provide that confirmation.
- The Company does not yet have confirmation from senior counsel that he is able to provide that confirmation.
- The success of the 92b solution required will be largely dependent on the level of support the updated Offer receives from Feltex Claimants and the public.
- This position will be updated prior to any allotment.



Other matters

The amounts of potential returns to the Feltex Claimants in various Resolution scenarios are explained in more detail at **Appendix 4** and are summarized in the table below.

The waterfall of priorities set out at pages 5 and 6 of the Offer, are discussed in further detail at **Appendix 4**, as are other matters.

Risk Warning:

This following financial information is based on the Court agreeing that investors suffered a recoverable loss and awarding them damages, which is subject to a number of significant risks including:

- The defendants are well-funded and are likely to appeal any adverse judgments.
- Whether the claimants are entitled to any recovery is still to be determined and there is no guarantee that a Court will find in their favour. Accordingly, the returns noted below are tentative and there is a risk they will not arise.
- The claimants may not have sufficient funds to complete all aspects of the proceedings particularly if there are on-going appeals.

For simplicity, in the table below gst is excluded, actual Project Costs are assumed to be \$20m, success and management fees are rounded to 40%. The table sets out various scenarios based on the revised Measurement of Loss valuation range advised by Greg Houston. The right-hand column sets out the net end result for the Feltex Claimants per IPO share claimed. The column to the left of that sets out the total overall funders' entitlements under the JAFL Agreement under each scenario.

Average loss per share Cents per share	x 71m shares claimed for \$m	Add Interest estimate i.e. same again \$m	Add Costs Awarded \$m estimates	Total Resolution Sum \$m	Deduct actual costs, success fees \$m	Cents per share for Feltex Claimants
13cps	\$9.2	\$9.2	\$5.0	\$23.4	(\$21.4)	3cps
33cps	\$23.4	\$23.4	\$6.0	\$52.8	(\$33.1)	28cps
53cps	\$37.6	\$37.6	\$7.0	\$82.2	(\$44.9)	53cps
100cps	\$71.0	\$71.0	\$8.0	\$150.0	(\$72.0)	109cps
143cps	\$101.5	\$101.5	\$9.0	\$212.0	(\$96.8)	162cps

The amounts in the Table above are not intended to be precise or legally binding on any party, they are indicative of the wide range of possible Resolution outcomes at Stage Two and under the JAFL Agreement. Refer to **Appendix 1 & 4** below for a detailed discussion of possible outcomes. It is possible that the outcome of Stage Two will be that no compensation is awarded to any Feltex Claimants.



The amount estimated for interest in the table (i.e. the same again) has been calculated as simple annual interest using rates prescribed by the Judicature Act from time to time since 2004. There is a risk the amount of interest payable will be disputed and that has been signaled by Credit Suisse's lawyers.

To achieve a Stage Two compensation outcome of more than 53cps, for every Feltex IPO share they subscribed, claimants will have to prove at Stage Two, or as otherwise determined by the Court, that they would have reversed their investment decision had they known, for example, the **findings of facts** set out by the Supreme Court at its paragraph [263] copied below in **Appendix 1**.

The returns from investment in the Feltex Claim outlined in this updated offer will be achieved if the court awards compensation of the Greg Houston expert valuation minimum of 13cps times 71 million shares of Feltex Claim plus estimated interest and costs. The Company does not participate in any higher awards to the Feltex Claimants. There is a risk that no claims will be successful or the amount awarded is less than 13cps in which case Investors will not receive the full amount of the expected return.

Further updates will be provided as developments unfold and prior to any allotment.

For further information contact

JAFI Litigation Funding Partners Limited

Directors

Tony Gavigan: 021 326 272

Logan Granger 027 283 8331



Appendix 1

Revised Valuation of Feltex loss caused by untrue statement about revenue - update

By way of background, the Feltex Claim was not commercially viable after the 2019 evidence admissibility rulings which excluded important evidence. Those rulings removed any expert valuation adjustment for a fully informed market reaction to revised future revenue expectations (about Feltex) as at 2 June 2004.

However, while stating that it was prevented from considering the arguments for admissibility of the original evidence at the current stage two interlocutory phase, [it can consider the appeal in due course] the Supreme Court clarification at [8] of its decision [2019] NZSC 148 dated 13 December 2019 **repeated** their [2018] NZSC 74, 15 August 2018 **findings of fact** including that:

[263] We accept that the FY05 sales revenue projection was not arrived at by adding a percentage increase to the FY04 forecast figure. In our view, however, this does not answer Mr Houghton's point, which is that it was unrealistic, in light of the history of the company and in particular the bad results in January, February, April and May, to consider that Feltex could achieve the level of sales projected for FY05.

This clarified a dispute with the Feltex Defendants throughout 2019 over whether or not those words were **findings of fact**. This in turn enabled the expert valuation evidence of Mr Houston to be revised. A summary of that valuation is at paragraph 30 of the decision. It concludes at:

30 (c) These conclusions indicate that the Feltex Carpets Limited shares allotted at \$1.70 per share as at 2 June 2004 were worth between \$1.17 and \$1.57.

Risk Warning:

For investors in the Offer to receive any return they are relying on the Courts concluding (after all appeals) that the Feltex investors invested on the faith of the prospectus and suffered a loss by reason of the untrue statement. There are still significant hurdles to that outcome including that the Court will have to accept and approve the expert evidence of the actual loss. The defendants will vigorously dispute these matters.

Revised Measurement of Loss evidence – fair value of the Feltex Claim

The Supreme Court had already decided in 2018 that the Measurement of Loss basis applies if a claimant is unable to establish that he or she would have reversed their investment decision had they known the true Feltex revenue position as at 2 June 2004. As noted above, the May 22, 2020 decision records at [30] that Mr Houston deposed his revised upper bound Measurement of Loss at 53 cents per Feltex IPO share.



If none of the Feltex Claimants establish their entitlement to a full refund, based on their own evidence that they would have reversed their investment decision as at 2 June 2004, that basis will apply if Mr. Houston's evidence prevails at say 53cps. In that case, the total Feltex Claims (in respect of 71m Feltex IPO shares) would total around \$37.6m, plus interest since 2004, so around \$75.2m in total, plus costs.

If the Court determines the Measurement of Loss falls in the middle of Mr Houston's range (13cps to 53cps loss) i.e. 33cps the total amount of claim in that scenario would be reduced to \$23.4m plus interest plus costs. At \$46.8m plus costs the claim is still worth pursuing. Houghton's actual legal costs since 2008 are around \$20m.

Reversal of Investment Decision – full refund of subscription

Sir Paul Collins' affidavit evidence recorded at [26] of the decision is that had he known of [Feltex's] revenue performance he would not have invested in the Feltex IPO. His associated entities claim their total loss of \$666,000 plus interest. The Company believes the situation of the non-trading entity is closely representative of several large claimants' claims. They all lost around \$1.22 per share net of mitigation.

Even if only half the claimants (by value) persuade the Court that they are entitled to the Supreme Court's full refund remedy, claims will total around \$61.5m plus interest plus costs (say \$140m) which will exceed the AIG/Chubb first defendant directors' IPO and D&O insurance policies estimated at \$90m. Judgment for liability is also sought against the Credit Suisse defendants.

Mr Houghton's case is that no one pays \$1.70 in a quarter of a billion dollar float for a share that would trade at \$1.57 at best once the truth came out, let alone one that in the same Greg Houston expert valuation range might be worth only \$1.17.

Nevertheless it is for the Court to determine whether it accepts the Feltex Claimants' evidence. If their evidence is not accepted there may be low or no compensation paid under the Supreme Court ordered criteria.



Appendix 2

The decision of Justice Dobson 22 May 2020 – summary

[91] I accept that a case has been made out for striking out this proceeding. Given the length of its history and the number of interests affected by its determination, that is a regrettable outcome. However, in balancing the competing interests of justice as reflected for claimants and defendants, it is an outcome I am satisfied is warranted, subject to affording the claimants and their funder one last opportunity to perform.

[92] There will accordingly be a striking out of the proceeding on 14 July 2020, unless, by 13 July 2020: (a) security for costs for stage two in the sum of \$1.65 million has been either lodged with the Registry of the Court or provided on other terms reasonably agreed to by the defendants and accepted by the Court by that date; and (b) senior counsel for the claimants has confirmed that, in his opinion, the claimants are adequately resourced to prepare for and present all aspects of their stage two claims.

A full copy of the decision is available on the Offer website page at the Updates tab. The following notes and comments are made by reference to the paragraph references in the decision.

Discussion of the decision [by reference to its paragraphs]

[56] & [93] Order for distribution of the decision

As ordered by paragraphs [56] and [93] of the decision the Company hereby makes available (including by email) a copy of this judgment to all those to whom the Crowdfunding Offer has been made.

[25] to [54] Complaints by defendants

Investors are directed to paragraphs [25] to [54] of the decision where the Feltex Claimants' arguments and the Defendants complaints are both set out.

[55] & [56] Not the forum

The director defendants' complaints are dealt with by Justice Dobson at [55] and [56] where he notes that the [May 11, 2020] hearing was not the forum in which to make any determinations on the standard of accuracy required of such crowd funding documents, given the informality and lack of more stringent requirements that the law contemplates should be permitted them. The complaints may have been overstated or misconceived. The Crowdfunding regime prescribes brevity over excessive information. Nevertheless, out of an abundance of caution, the following disclosure and comments in reply are noted.



[30] Revised Valuation evidence

The significance of the revised Greg Houston valuation of measure of loss following [2018] NZSC 74 and [2019] NZSC 148 is set out at para [30] and discussed in **Appendix 1**. If this evidence is accepted by the Court it will have turned the un-bankable admissible expert loss evidence, where only 7cps or 8cps of loss was left intact after the 2019 interlocutory evidence hearings, into bankable expert loss evidence (at 13cps to 53cps).

[45] & [46] Distribution of background material

As ordered earlier by the Court, a full recent history of the previously unsuccessful efforts by Eric Houghton and JAFL on behalf of the Feltex Claimants to meet the Court ordered security for costs [since the Feltex director defendants were found in 2018 to be in breach of the Securities Act 1978 and the Fair Trading Act 1986] had been emailed to Feltex Claimants and remains available on the Offer Documents tab on the Offer website page. The minutes are dated March 2, 2020. March 25, 2020 and April 8, 2020.

[48] Waterfall of entitlements

JAFL's entitlements and the order of priority in which amounts are payable out of any Resolution Sums are set out on pages 5 and 6 of the Offer. It is disclosed that to the extent they are not resolved through the proposed security for costs solution and its agreed priorities, some entitlements as between JAFL and HLIF LP may be disputed. The waterfall is updated below at **Appendix 4**.

[49] Additional claimants to be heard at Stage Two

The decision at [86] makes extra hearing time available to hear additional claimants claims. The estimated time frame for resolving the Feltex claim is disclosed at pages 21 & 22 of the Offer as being up to 3 years.

[53] and [54] Proposed solutions

The concerns discussed are addressed by the proposed solutions to [92] (a) and (b) described above, and the updated tables above.

[86] Timing

The decision suggests at [86] a Stage 2 trial date of 27 October 2020 for a hearing of up to 6 weeks. The Company thinks that is unrealistic. The risks relating to that possible trial date include whether or not the Covid-19 Public Health Response Act 2020 will allow realistic attendance in person by the claimants overseas witnesses including www.HoustonKemp.com valuation expert Greg Houston, refer [30] of the decision. The directors of the Company and of JAFL have been advised this evidence cannot be given satisfactorily by VMR or similar video link. The defendants have had the advantage of the *viva voce* evidence of Professor Cornell's "stage two" valuation evidence (heard at stage one). The Company believes the time of Covid-19 closed and constricted borders would be better used to provide an opportunity for pre-stage-two-trial loss expert and inter-party mediation.



Appendix 3

The Orders will result in a strike out on 14 July 2020 of the Feltex claims and any prospect of claimants receiving the [2018] NZSC 74 Supreme Court ordered compensation, **unless the Orders are complied with.**

Leading claimants, business people and professionals have committed in principle to underwrite the \$1,650,000 Security for Costs required for Stage Two to proceed. Documentation of that underwrite through Stage Two Guarantee Limited (the **Guarantor**) is underway.

The level of security for costs to be provided by Stage Two Guarantee Limited will be capped at \$1,650,000. In the Offer at Appendix A 10 (c) it contemplates a higher level of \$2,580,000 as security for costs. The market cost of providing that additional guarantee (above the \$1.65m level) cannot currently be justified.

The Guarantor was formed on 2 June, 2020 and it has not traded. Its directors are Craig Anderson, Tony Gavigan and Logan Granger.

Each of the proposed underwriter shareholders of the Guarantor will subscribe for their agreed share of the Guarantor's guarantee.

The underwriter shareholders include:

- Eric Houghton
- IL and NA Hamilton
- Sir Paul Collins' Active Equity Holdings Limited
- Anthony Walshe
- Fore Golfers Limited (FGL)
- Craig Anderson
- Logan Granger
- The Business Integrity Trust

JAFI Litigation Funding Partners Limited (the Company) will contribute \$330,000 to the guarantee solution by paying a fee of that amount to the Guarantor.

In return for that proposed conditional investment in the costs of Stage Two of the Feltex Claim, as described on pages 8, 16 and 22 of the Offer, the Company will be entitled to earn a gross pre tax fee of \$990,000 payable on Success from the first priority payments out of the Resolution Sums of the Feltex Claim.

In addition, on Success with the same priority from the same source an additional fee of \$330,000 will be paid to Stage Two Guarantee Limited.

The structure described above delivers a cost saving to JAFI of \$330,000 compared with the alternative Security for Costs solution of providing the entire \$1,650,000 security for costs in cash.



Risk Warning:

The proposed security for costs solution is not guaranteed to be successful. Key risks include that:

- There are currently no formalised commitments from the proposed shareholders of Stage Two Guarantee Limited.
- The Court in the 22 May 2020 judgment expressed concerns about JAFL meeting costs orders noting “Since the security for costs order was made, there have been a number of assurances as to compliance with it, none of which have been fulfilled. ...The pattern is sufficient to justify a healthy level of scepticism that [JAFL] can perform its obligations as funder to arrange security for costs and to fund pursuit of the stage two claims.
- The approval of the Court and agreement of the defendants is required for the proposed solution to be effective. The Company has not obtained a legal opinion on the whether the proposed solution would be approved by the Court but there is a risk that it will not be approved by the Court.
- As an investor your funds will be used to fund any required appeals to have the costs solution approved. If the solution is not approved you will lose part of your investment including funds used to pay for this offer and for any required appeals.
- If appeals are required this may further delay hearings on the main claim.



Appendix 4

Other matters - Clarification of potential outcomes for Feltex Claimants

The minimum amount of total FeltexClaim required to be obtained in order for the Company to achieve the potential returns outlined above is about \$60m including interest and costs. This would deliver realisation of both the existing investment in JAFL's rights and the proposed new cash investment. At that level Feltex Claimants would receive about 30cps net compensation.

Risk Warning:

This following financial information is based on the Court agreeing that investors suffered a recoverable loss and awarding them damages, which is subject to a number of significant risks including:

- The defendants are well-funded and are likely to appeal any adverse judgments.
- Whether the claimants are entitled to any recovery is still to be determined and there is no guarantee that a Court will find in their favour. Accordingly, the returns noted below are tentative and there is a real risk they will not arise.
- The claimants may not have sufficient funds to complete all aspects of the proceedings particularly if there are on-going appeals.

If the estimated \$90m insurance proceeds are recovered the net compensation to Feltex Claimants increases to about 56cps. If about another \$90m of compensation is contributed by Credit Suisse, on top of the AIG/Chubb insurance proceeds, the Feltex claimants can recover their average loss of \$1.43 per share. Credit Suisse made a USD100m (NZ\$160m) profit on the Feltex IPO.

Past costs and the proposed new investment in the claim by the Company and Stage Two Guarantee Limited have to be repaid first out of any Resolution Sums - because most of that money has not been provided by the claimant group itself. It is recognized that all of the funding at the outset in 2007, and much since 2016, has been provided by some claimants who will be separately rewarded for taking that risk.

For simplicity, in the table below gst is excluded, actual Project Costs are assumed to be \$20m, success and management fees are rounded to 40%.

Average loss per share Cents per share	x 71m shares claimed for \$m	Add Interest, estimate same again \$m	Add Costs awarded \$m estimates	Total Resolution Sum \$m	Deduct actual costs, success fees \$m	Cents per share for Feltex Claimants
13cps	\$9.2	\$9.2	\$5.0	\$23.4	(\$21.4)	3cps
33cps	\$23.4	\$23.4	\$6.0	\$52.8	(\$33.1)	28cps
53cps	\$37.6	\$37.6	\$7.0	\$82.2	(\$44.9)	53cps
100cps	\$71.0	\$71.0	\$8.0	\$150.0	(\$72.0)	109cps
143cps	\$101.5	\$101.5	\$9.0	\$212.0	(\$96.8)	162cps



The amounts in the Table above are not intended to be precise or legally binding on any party, they are indicative of the wide range of possible Resolution outcomes at Stage Two and under the JAFL Agreement. Refer to **Appendix 1** above for a detailed discussion of possible outcomes. It is possible that the outcome of Stage Two will be that no compensation is awarded to any Feltex Claimants.

The amount estimated for interest in the table (i.e. the same again) has been calculated as simple annual interest using rates prescribed by the Judicature Act from time to time since 2004. There is a risk the amount of interest payable will be less and or disputed and that has already been signaled by Credit Suisse's lawyers.

To achieve a Stage Two compensation outcome of more than 53cps, for every Feltex IPO share they subscribed, claimants will have to prove at Stage Two, or as otherwise determined by the Court, that they would have reversed their investment decision had they known, for example, the **findings of facts** set out by the Supreme Court at its paragraph [263] copied above.



Offer Summary

Warning Statement for crowd funding participants

Equity crowd funding is risky. Issuers using this facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks.

You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to offers by issuers using this facility. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.

Warning Statement for certain wholesale investors

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment. Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

Offer

This is an offer by JAFL Litigation Funding Partners Limited (the **Company**) of the opportunity to invest in joint or “class action” litigation funding business in New Zealand alongside existing industry participant (and the Company’s related entity) Joint Action Funding Limited (**JAFL**).



In summary:

- The Company is offering to issue a minimum of 500,000 and an initial maximum of 5,000,000 new ordinary Shares to investors at \$1.00 per share (the **Offer**). Of these shares, up to 2,000,000 will be offered via the Collinson’s crowdfunding platform, with the balance being offered (directly by the Company and via Collinson) to wholesale and other exempt investors as defined in the Financial Markets Conduct Act 2013 (**FMCA**). If the initial offer is fully subscribed, the Company may offer a further 5,000,000 new ordinary shares, also to exempt investors.
- The Company will use the proceeds raised under this offer first to provide a security for costs solution for Stage Two of the Feltex litigation (described more fully under the next heading). It will also acquire interests in the Feltex litigation project in return for the issue of its shares to Joint Action Funding Limited. In future, the Company may invest remaining proceeds in other litigation projects.
- The Company will seek a return of \$2 for every \$1 it invests in litigation projects, however, it is important for investors to note that no return is guaranteed and the timeframes for realising a return may be lengthy and are susceptible to various risks including the risk of litigation delays.
- The Offer will open on Friday 1 May 2020 and remain open for acceptance until Friday 29 May 2020, although the deadline may be extended until Tuesday 30 June 2020 depending on progress.

Investment in Stage Two of the FeltexClaim

The Company’s first investment will be the acquisition of the right to receive six million dollars (\$6,000,000) of accrued success fee entitlements in the Feltex litigation from Joint Action Funding Limited (**JAFL**). This will be achieved by entry into a simple assignment deed between the Company and JAFL pursuant to which JAFL receives the shares in exchange for the assignment of the relevant rights.

The Company will pay \$3,000,000 for those rights which shall be payable in full by the Company issuing 3 million shares in the Company to JAFL. The sharing of its FeltexClaim upside by JAFL with the Company is intended to help attract investment in this Offer and align incentives between the Company, JAFL and its other investors.

Further details about how these entitlements will be shared with the Company can be found under the heading on page 5 “*Calculation of return to investors under the offer*”.

For some years, JAFL has been providing funding to the Eric Houghton-led claimants (the **Claimants**) in *Houghton v Saunders & Others* (CIV 2008 409 348) (the **FeltexClaim**) which has now led to a finding of defendant breach of the Securities



Act 1978 and the Fair Trading Act 1986 being proven at the Supreme Court level. In essence, the Supreme Court has now found that the defendants made an untrue statement for the purposes of the Securities Act 1978 being a forecast of revenue for Feltex for the 2004 financial year in the Feltex IPO prospectus. The Supreme Court in [2019] NZSC 148 at paragraph 8 reiterated its 2018 finding at paragraph 263 that Feltex had produced “bad results in January, February, April and May [2004]”.

The FeltexClaim is now scheduled to proceed to the compensation stage (**Stage Two**) once all funding and security for costs arrangements are in place.

At Stage Two, the Court will be required to determine whether the investors (other than Mr Houghton) invested on the faith of the prospectus such that they can be said to have sustained loss by reason of the untrue statement, and, if so, the quantum of that loss. The Court noted that it will not be difficult for an investor to prove that they invested “on the faith of” the prospectus where a prospectus contains an untrue statement, but left this as an issue to be proved by the Feltex Claimants in Stage Two.

In the FeltexClaim, approximately 3,639 Claimants claim approximately \$200 million. However, it is possible that the Court will determine that the quantum of compensation payable is much less than the amount sought, or even zero.

The FeltexClaim defendants claim a right to relief under section 63 of the Securities Act 1978 which gives the court power to excuse from liability a person who might be liable in respect of negligence, default, breach of duty or breach of trust in connection with an offer to the public or allotment of securities. The court can grant such relief if it determines that the person has acted honestly and reasonably and, having regard to all the circumstances of a case, ought fairly to be excused. The Claimants are likely to argue that the terms of section 63 do not apply to the defendants, in part because making an untrue statement and the actions of some directors were inconsistent with honesty. For instance, one director stated in an email regarding the then-recent sale of the relevant Feltex shares that he was “*Pleased it’s done--there’s some goodness left in the lemon, but we squeezed most of it out. Not bad for a company that was bankrupt some 18 months ago*”.

Cash raised by the Offer will be used to provide at least \$1.65 million security for costs to protect representative plaintiff, Mr Houghton against the prospect of an adverse costs award being made against him.

Exactly how that security for costs solution is structured will depend on the amount raised by the Company under this Offer. If the minimum \$500,000 is raised, then the security of costs solution will probably take the form of adverse costs insurance, and the funds raised will be used to pay a premium to the insurer. If closer to \$5,000,000 is raised, the security for costs solution may instead take the form of cash, or a mixture of cash and insurance. If a cash solution is offered, the Company will seek to hold these amounts on investment (on terms agreed with the Court) pending the final assessment of quantum of compensation by the Court.

Investors should understand that in the event the Court determines there is little or no compensation payable to the Claimants, the cash held will likely be payable to the



defendants, because, if they are successful, the defendants will probably be entitled to recover some of their costs from Mr Houghton as representative plaintiff.

The Company will make a decision as to how to best structure the security for costs solution in the FeltexClaim once it understands how much is raised under this Offer.

Funds raised in excess of \$1.65 million will be invested in the costs of running the Stage Two compensation argument at the High Court, and the costs of running any appeals to higher courts. The Company considers that appeals are likely and is planning its business on the basis that all possible appeals will be made.

It is important for investors to understand that if the compensation outcome of the Stage Two proceedings is lower than expected by JAFL and the Claimants, or is zero, then their investment may be lost completely (subject to any returns on other investments made by the Company in litigation projects).

The returns to the Company on its investments in the FeltexClaim will be payable only when and if the Claimants receive their compensation from the defendants, who are largely insured. Note that even once a final compensation award is made, enforcement proceedings may be necessary to recover these amounts from the defendants.

- The first defendant directors of Feltex are insured by AIG New Zealand Limited (**AIG**) under IPO and directors' and officers' policies (**AIG policies**). In 2011, the Claimants claimed a charge over the insurance monies due under these AIG policies. The *Steigrad* decision referred to in the next paragraph confirms the existence of such policies.
- The right of the Claimants to a charge over insurance monies potentially due under the relevant AIG policies in respect of an insured's liability to pay damages or compensation was upheld by the Supreme Court in the 2013 decision of *BFSL 2007 Ltd v Steigrad* [2013] NZSC 156.
- The Second and Third Defendants are part of Credit Suisse's private equity business. Credit Suisse are a secondary party to the AIG IPO policy and also typically self-insure issuance risks. It is expected that the Third Defendant, an entity registered in Delaware, may have no assets other than its interest in the AIG policies. The Second Defendant was an issuer of the Feltex shares and is part of the entity listed on the NYSE and SWX under code CS or CSGN, which has a current market capitalisation of approximately USD 22 billion. At present, it holds an A- Fitch Rating. However, the value of Credit Suisse's shares can and do fluctuate wildly and its solvency remains a risk to be taken into account in assessing whether it will be able to pay any compensation award made against it. Note that during the course of the FeltexClaim, Credit Suisse's share price has peaked at CHF 87 in May 2007, to a current price of around CHF 8.
- Credit Suisse has defended Houghton's proceeding since 2008 and this fulfils one of the criteria required for being able to enforce any New Zealand Court



money judgment in New York. However, if compensation is awarded by the New Zealand courts against Credit Suisse, it will be necessary to enforce any judgment in US law proceedings in New York. It is unclear how long these proceedings could take, how much they would cost or whether the US courts would agree to enforce the New Zealand judgment against Credit Suisse.

Calculation of return to investors under the Offer

Before investing in the Offer, you should be aware that the FeltexClaim is extremely complex, due to a number of reasons, including the considerable time which has elapsed since 2003/2004 when the relevant circumstances arose, the complex nature of the documents which culminated in the Claimants purchasing shares in Feltex, the number of large corporates involved in the factual matrix, the legal tests and arguments which have been and will continue to be applied throughout the Court proceedings and the fact that, every step of the way, the FeltexClaim has been contested and fought by the relevant defendants. The Company considers it is very likely that the defendants will continue to resist liability through all available avenues.

These factors and other factors have meant that litigation costs have been high, and that a number of avenues for funding the FeltexClaim have been needed at various times. As a result, to the extent the FeltexClaim is successful, a complex calculation will be required to be agreed for determining who is entitled to share in the proceeds of the FeltexClaim. JAFL, pursuant to the Feltex Investigation, Management and Funding Agreement between JAFL and the Claimants approved by the High Court in 2010 and amended in 2011 (the **JAFL Agreement**), is one party which is entitled to share in the proceeds of the FeltexClaim, specifically in relation to the “Resolution Sums” as defined in the JAFL Agreement (**Resolution Sums**).

However, you should understand that JAFL has entered into a number of co-funding arrangements pursuant to which JAFL effectively “shares” its entitlements to the Resolution Sums with those co-funders, and these arrangements will affect JAFL’s entitlements under the JAFL Agreement, and therefore the Company’s entitlements to a return on the amounts invested under the Offer. One co-funder, namely HLIF Limited Partnership (**HLIF LP**), has contested the amount of its entitlement to share with JAFL, and while JAFL believes that HLIF LP is not so entitled, it may be necessary for JAFL to defend its position if a commercial resolution cannot be sought with HLIF LP.

Outcome for the Company where zero compensation awarded to Feltex Claimants

The total amount of compensation sought against the Defendants in the FeltexClaim is over \$200 million.

On a worst case scenario, the Court may rule that the Claimants are not entitled to any compensation, in which case the return to JAFL, and therefore the Company, and therefore investors in the Offer will be zero.



Outcome for the Company where \$100 million compensation awarded to Feltex Claimants

Below is a summary of how compensation would be distributed on a scenario where, say \$100,000,000 is awarded by the Court to Claimants in the FeltexClaim. Such compensation amounts are referred to as Resolution Sums in the JAFL Agreement.

First, it is intended that all costs will be repaid to the payers of such costs (including the Company) in full on a pari passu (equal) basis and in priority to any other payment being made from the compensation awarded (**Project Costs**), except as has been agreed otherwise amongst JAFL, FGL, SCF and the Company as disclosed below.

It is intended that Project Costs will be repaid as follows: First, any unpaid legal costs for Stage Two will have first priority for repayment. Next, all obligations of Houghton and JAFL to the SCF co-funders FGL and the Company in respect of their first \$3,500,000 cash investment in aggregate in the FeltexClaim will be met. Once these payments have been made, the Company will receive its initial cash investment up to \$2,580,000 back in full. Next, the return on the \$3,500,000 invested will be paid. Next, any investment by the Company above \$2,580,000 and the return on those funds will be paid. These payments are referred to collectively as **NZ Co-funder Obligations**.

Next, all other unpaid Project Costs will be paid.

At this stage, all Project Costs and all NZ Co-funder Obligations will have been paid. To meet these obligations JAFL will have shared the first \$9 million of its success and management fee entitlements. In addition, at present, Project Costs are expected to total around \$21 million, so assuming a \$100 million award to Claimants, approximately \$70 million will remain available for distribution under the JAFL Agreement following the payment of all Project Costs and NZ Co-funder Obligations. (JAFL's success and management fee entitlements are expected to total approximately \$34 million in this scenario, including the \$9,000,000 shared above).

The effect of the deal between JAFL and the Company whereby JAFL takes 3,000,000 shares in the Company in exchange for \$6,000,000 of accrued success fee entitlements in the FeltexClaim is that the Company is then entitled to share pari passu (equally) with JAFL whatever remaining Resolution Sums JAFL is entitled to pursuant to clause 12(1)(b) and (e) of the JAFL Agreement, up to the first \$12,000,000 received by JAFL.

That is, after payment of the Project Costs and NZ Co-funder Obligations, if JAFL ultimately becomes entitled to at least a further \$12,000,000 of Resolution Sums, that \$12,000,000 will be divided equally between the Company and JAFL, and once the Company has received its full \$6,000,000, JAFL will be entitled to the balance of approximately \$15,000,000 (subject to the disputed remaining obligations to HLIF LP).



Alternatively, if JAFL receives only, say, \$8,000,000 of further Resolution Sums, then the Company would receive only \$4,000,000 as its share (plus repayment of its initial investment), and not the full \$6,000,000 targeted return on its investment.

Note that because JAFL is a shareholder of the Company, JAFL will be entitled to share in Company shareholder distributions in accordance with the proportion of its shareholding.

The above waterfall of payments is intended to align JAFL's success fee incentives with the Company's, because the Company is putting up the cash to enable Stage Two to proceed. Thereafter, JAFL will apply its remaining entitlements between itself and HLIF LP in accordance with the disputed Investment Agreement between them. JAFL believes this scheduling of priorities is consistent with the JAFL Agreement, the prime purpose of which is to enable efficient prosecution of the Claimants claims.

Details of the Offer

The Company's core business is funding litigation in New Zealand, which is researched and managed by its related party business partner, Joint Action Funding Limited (JAFL).

Initial offer of 5 million shares

The Company will initially offer to issue between 500,000 and 5,000,000 new ordinary shares to investors at \$1.00 per share, as follows:

- 2,000,000 of the shares on offer are reserved for subscription by Collinson crowdfunding investors.
- The Claimants in the FeltexClaim will be invited to invest in the Offer and may be given priority at allotment if the crowd Offer is oversubscribed. The Claimants will invest via the Collinson crowdfunding platform.
- 3,000,000 shares are reserved for subscription by wholesale investors and other investors who are deemed exempt from the disclosure requirements prescribed by the Financial Markets Conduct Act 2013 (the **FMCA**).

The initial offer will raise a minimum of \$500,000 and a maximum of \$5,000,000 from the issue of new ordinary shares in the Company to investors other than JAFL. The initial offer will result in a collective ownership stake of between approximately 14.3% and 62.5% for third party investors (i.e. investors other than related party, JAFL) depending on the amount raised under this initial offer.

In order for the capital raise to proceed and for investors to become shareholders in the Company, the Company will need to reach its minimum goal of \$500,000 from third party investors.



The following table demonstrates how the amounts raised under the Offer will be used by the Company under a minimum and initial maximum investment outcome:

(All figures exclude GST)	Minimum 500,000 New Ordinary Shares	Maximum 5,000,000 New Ordinary Shares
Funds raised \$1 per share	\$500,000	\$5,000,000
Capital raising costs	(\$50,000)	(\$320,000)
Net funds raised	\$450,000	\$4,680,000
Available for investment in litigation projects	\$70,000	\$2,000,000
Available for cash backed security for costs solutions or adverse costs insurance premiums	\$330,000	\$2,580,000
Working capital (costs of operating Company's business operations)	\$50,000	\$100,000
Total	\$450,000	\$4,680,000

Subsequent offer in the event of an oversubscription

If the full \$5,000,000 is subscribed under the initial offer, and further new investors still wish to purchase shares, the Company reserves the right to issue further new ordinary shares at \$1.00 per share to wholesale investors who are exempt from disclosure requirements under the FMCA, up to a further 5,000,000 shares. In this event, the combined effect of the initial and subsequent offer of shares would be to raise up to \$10,000,000 and would result in a collective ownership stake of up to 77% for third party investors.

Principles for investment in litigation by the Company

The Company will partner with related party, JAFL in its existing and new projects as those projects reach what the Company considers to be an advanced stage. In general, the Company will look to invest at a stage when liability has been determined and the remaining issues identified in the litigation. Guidance on such issues will often already be available from Court of Appeal and/or Supreme Court decisions (as in the FeltexClaim).

Generally, the Company will fund litigation where the defendants are either insured or are themselves of financial substance. The Company will not fund litigation against any branch of the New Zealand Government or against any major New Zealand trading banks.

Company Partner - Joint Action Funding Limited

The Company's business partner and shareholder in the Company, JAFL is experienced in litigation funding. JAFL has been providing funding in the FeltexClaim which has resulted in prominent and important case law which now govern certain principles relating to joint or "class actions" in New Zealand.



In consideration of providing funding in the FeltexClaim, JAFL is entitled to repayment of costs (funded and co-funded) as well as the payment of success and management fees. These entitlements are set out in the JAFL Agreement. Further details of these arrangements are contained at page 5 above, and the JAFL Agreement can be found on the Collinson website.

In the context of the FeltexClaim, JAFL has entered into several cost funding and fee sharing agreements with co-funders, including in 2011 with Cayman Islands based HLIF LP, and in 2017 with approximately 100 Feltex Claimants known as the Supreme Court Funders (SCF's), and in 2019 with Auckland based Fore Golfers Limited (FGL). In addition, in 2006/07, approximately 700 intending Claimants contributed to the costs of research, expert analysis and the legal costs of preparation of an initial statement of claim. These arrangements mean that JAFL's entitlements under the JAFL Agreement need to be shared with co-funders such as those above. Further details about how these entitlements will be shared with the Company can be found under the heading on page 5 "*Calculation of return to investors under the offer*".

JAFL's assistance with the FeltexClaim has helped in the culmination of the Supreme Court's decision dated 15 August 2018 in which the Court held that the 2004 prospectus issued by Feltex contained an untrue statement for the purposes of the Securities Act 1978. The untrue statement also constituted misleading and deceptive conduct under the Fair Trading Act 1986.

Stage Two of the FeltexClaim will determine how much compensation (if any) is payable to each of the Claimants. Some of the claimants may be entitled to compensation equalling the full amount of their investment if they can persuade the Court they would not have invested in Feltex shares had they been aware of the true position of Feltex. Others may receive a lesser amount of compensation described by the Supreme Court as the "measure of loss", being the difference between the price paid for the securities and the estimated value had there been full disclosure. The impact the true facts would have had on the Feltex share value as at 2 June 2004 is being assessed for the Claimants by experts HoustonKemp. Other calculations as to compensation may also become relevant throughout the conduct of the litigation. On the other hand, if the Court finds that the untrue statement did not cause any loss, then the Claimants may not be entitled to any compensation, in which case neither JAFL nor the Company will receive any return on their investment into the FeltexClaim, and the investors will lose their investment under this Offer. One of the practical difficulties with establishing loss of these Claimants is that some Claimants have died and others are too elderly or otherwise reluctant to give evidence in person in Court, if required, especially during the Covid19 response period and a winter which could bring a second wave of infection.

Obviously, other hurdles will probably arise as the litigation progresses. As such, although the return on the investment under the Offer may be attractive, there are significant risks associated with the Offer. Multiple hearings, protracted arguments and unpredictable outcomes are all common risks in litigation. For instance, in the recent *Mainzeal* litigation, both sides have appealed the amount of damages awarded to the relevant claimants. In the recent *Strathboss Kiwifruit* growers litigation, the



growers win in the High Court against the Crown has now been reversed on appeal. More information on the risks associated with this Offer can be found in the following paragraph and at paragraph 9 of Appendix A.

The investors' return will be further affected by other factors driven by the Company itself, including the level of the Company's costs and whether the Company decides to return funds as dividends or hold funds to seek other investment opportunities.

Risks associated with the Offer

Returns on investment in the Offer will be limited to the extent to which the Claimants are successful in the FeltexClaim and the outcome of any other litigation projects the Company invests in. The outcome of the FeltexClaim Stage Two compensation hearing and inevitable appeals are inherently uncertain and **the Offer is not risk free**.

If the FeltexClaim is unsuccessful, or if any other litigation claim in which the Company invests is unsuccessful, the Company's investment (and therefore, investor capital) may be lost entirely, or the returns to the Company and its investors may be much lower than expected.

The Offer's risks include underlying litigation risk in, and the uncertain time frame taken to achieve resolution of, the disputes being litigated and funded. These risks can be mitigated by research at the outset, by using expert lawyers and advisors, and by ensuring that the relevant claimants are being soundly funded for the long haul.

While it can reduce the per annum returns, patience can be a valuable tool in the litigation process, whereas haste is often expensive in terms of costs and mistakes. Legal processes do not lend themselves to a hasty approach, and you should consider carefully whether you are prepared to invest in something that may require patience in the face of considerable uncertainty.

On the other hand, if defendants cause delay or refuse to settle proven liabilities, they can in some circumstances incur interest charges and/or have costs awarded against them.

There are also risks associated with the Company and its structure:

- There is a risk that if the Company or JAFL becomes insolvent, the return to the Company's investors may not be available because there are insufficient funds. However, the Company believes that this risk is not high because any compensation amounts awarded are required to be dealt with through individual trust accounting arrangements which are personal to each party who is entitled to the Resolution Sums, and JAFL is a party to these arrangements. Before the Company invests any funds raised under this Offer, it will ensure that it is also made party to these arrangements on terms acceptable to it.
- There is a "key person" risk in that Tony Gavigan is the 'alter ego' of JAFL and has superior knowledge of the complex factual matrix associated with the



FeltexClaim. However, in the event Tony becomes incapacitated, he has a team of well-informed people, including lawyers and accountants who also have a proper understanding of the situation.

- There is a risk that, if the amount raised by the Company under the Offer becomes insufficient and further funding is required, then the return to individual investors under the Offer will become diluted because returns need to be shared with any top-up investors. There is a further risk that, through the litigation process, it transpires the amount raised by the Company is insufficient, and further funding is not available.
- There is a risk that the insurers, including AIG New Zealand Limited, who are likely to be liable to pay a large proportion of any compensation awarded against the Feltex defendants, become insolvent and are not able to meet any compensation award.

Details of risks and mitigation strategies are set out in more detail at paragraph 9 of Appendix A below.

Use of funds raised by the offer

The Company intends to raise between \$500,000 and \$5,000,000 in the initial Offer and up to a further \$5,000,000 in the subsequent Offer (if the initial Offer is fully subscribed). All shares to be issued are new ordinary shares in the Company.

Depending on how much new capital is raised under the Offer, the funds will be used for litigation costs in relation to the FeltexClaim and other litigation the Company deems suitable (for instance, cash funding of security for costs solutions, paying insurance premiums, paying Court filing and hearing fees, paying witness expenses including travel and accommodation costs and/or paying legal fees and disbursements) and for the Company's working capital requirements. The Company's working capital requirements are expected to be low because it will have no employees, limited overhead costs other than moderate director's fees, and no fixed assets. For further details of director fees, see the information under the next heading, "Directors".

The Company's intended use of funds raised is explained in more detail at paragraph 1(e) of Appendix A below.

The Company's main purpose in offering investment in its shares is to help the Company finance the cash costs of potentially profitable litigation projects, especially those which the Company determines are socially and economically worthwhile, brought in the interests of New Zealand and New Zealanders. Class actions promote access to justice for large groups with individually smaller sized claims and they enable these individuals to self-protect and self-insure while suing large corporate defendants. By forming a large group of claimants with access to proper funding, class actions can place these individual claimants on a more even playing field with deep-pocketed defendants, many of whom are insured.



The Company will be entitled, in its sole discretion to choose which litigation projects to invest in. The investors under the Offer will potentially have a limited ability to challenge the decisions made by the Company as to the use of the funds raised.

Directors

Tony Gavigan, 64 is the current director and currently intends to be a director of the Company for its initial five years. He graduated from University of Canterbury in 1976, B.Com in Accounting. He has worked in Chartered Accountancy, Merchant Banking and Litigation Funding. Some or all of Tony's four adult, university educated children may provide JAFL with a succession plan if required to do so during this period provided they are willing at the time. Tim Gavigan, LL.B, B.Com, 31 is currently an associate at a leading law firm in London. Tim has expressed a willingness to accept appointment as alternate director of JAFL in the event this is necessary provided he is first approved to do so by his employers and subject to reaching agreement on terms.

Logan Granger, 51 B.Business Studies, CA, is a current director of the Company. Logan attended Massey and Auckland Universities and graduated Bachelor of Business Studies majoring in International Business. He completed post graduate Diplomas in Accounting and Finance. He has worked as a Chartered Accountant for over 20 years. He has been a director of Johnston Associates Chartered Accountants Limited (Johnston Associates) and will bring their support services at market rates to the treasury and company secretarial needs of the Company in order to keep overheads low and the Company's employee count at zero .

Director fees have been set at a modest \$20,000 per annum per director for the first year of the Company's business, with increases to be approved by shareholders by ordinary resolution.

Related party disclosure

JAFL is a closely related party of the Company. JAFL may earn or accrue management and success fees payable to it directly by claimants with whom it has entered funding agreements, including the Claimants in the FeltexClaim.

Tony Gavigan is a director of the Company and an 80% shareholder and sole director of JAFL. He is paid by JAFL for his services to JAFL from time to time as JAFL is able to afford. Because of his close relationship with JAFL he has been considered by the Court to be its alter ego. Because of this, in the FeltexClaim, the Court has indicated Tony might be held liable for adverse costs orders also able to be made against Houghton as representative Plaintiff from time to time. As such, use of some of the funds raised by the Company may have the effect of relieving Tony from exposure for adverse costs awards made against him personally.

Success of the Offer may produce other indirect benefits to JAFL and Tony Gavigan and his family, including relief against the threat of personal liability for adverse costs which have been threatened in relation to the FeltexClaim, and in particular final costs award of \$210,000 costs against JAFL (which were associated with adjourning a 4



November 2019 hearing). Currently those costs have been offset against the sum of \$930,000 of costs awarded to Mr Houghton but which have not yet been paid to him. The balance of costs due to Mr Houghton (\$720,000) may be released once the security for costs solution being funded by this Offer is put into place. It is quite possible some or all of the \$720,000 will be paid to lawyers for fees accrued and/or be the subject of a dispute with co-funders HLIF LP (but, for the avoidance of doubt, these funds will not be paid to JAFL or any related parties, with the possible exception of Patricia Mills in respect of her unpaid fees. Patricia Mills is a barrister who is also Tony Gavigan's life partner, and who has worked in part on a deferred payment basis on Stage One of the FeltexClaim).

Refer also to other related party disclosure at paragraph **10** of Appendix A below where further related party disclosures are made.

The structure of the Offer is intended to promote an alignment between the parties that have assisted the Feltex Claimants to date through seed capital in 2006/07, the JAFL Agreements and the co-funding agreements entered by JAFL since 2010. Further details about the co-funding agreements and their effect on the Company can be found under the heading on page 5 "*Calculation of return to investors under the offer*".

Company Director, Logan Granger is related to Johnston Associates, the firm which will supply treasury and company secretarial services to the Company. Johnston Associates have acted as accountants to JAFL and Tony Gavigan since 2007.

Refer also to other related party disclosure at paragraph **10** of Appendix A below.

Confirmation from solicitors

Collinson Crowdfunding notes that it has received confirmation from the Company's solicitors that the solicitors have made certain enquiries of the Company.

For further information, please see "How Companies may use the Service" in the Collinson Crowdfunding's Disclosure Statement.

We strongly recommend that investors read the Collinson Crowdfunding's Disclosure Statement and read this document carefully, including taking particular note of the warning statement on page 1 above.



Appendix A

1. Further Details of the Initial Offer

(a) **Minimum Subscription:** A total of \$500,000 for 14.3% of the Company (500,000 ordinary shares at \$1.00 per share). This means that in order for the capital raise to proceed and for you to become a shareholder of the Company, the Company must first reach its minimum goal of obtaining \$500,000 of investor funding.

(b) **Initial Maximum Investment target:** A total of \$5,000,000 for 62.5% of the Company (5,000,000 ordinary shares at \$1.00 per share).

The percentages referred to in this paragraph will diminish if the subsequent offer proceeds, because the total number of shares in the Company will increase by up to 5,000,000, thus diluting the shareholdings of investors in the initial offer. See paragraph 2(a) below for more information.

2. Further Details of the Subsequent Offer

(a) **Oversubscription:** The Company reserves the right to accept oversubscriptions from exempt investors of up to a further 5,000,000 shares (i.e. in addition to the initial offer described in paragraph 1 above). Assuming a total of 13,000,000 shares on issue after such oversubscription, investors would collectively hold 77% of the shares in the Company. Note that if a total of 13,000,000 shares are issued as opposed to only 5,000,000 new shares under the initial Offer, the collective ownership of the initial Offer investors will reduce from 62.5% of the Company down to 38.5% of the Company. However, the more money raised, the more investments the Company can expect to make and see a potential return on.

(b) **Share class offered:** Ordinary shares. As set out in clause 2.3 of the Company's constitution, ordinary shares are voting shares and have equal entitlements to receive dividends and any distributions from the Company.

(c) **Share price:** \$1.00 per share.

(d) **Minimum Investment Amount:** You may apply for a minimum of one thousand ordinary Shares for \$1,000. There is no maximum limit on the number of ordinary Shares you may apply for.

3. Company

(a) **Company name:** JAFL Litigation Funding Partners Limited (NZCN 7896701)

(b) **Date incorporated:** 26 February 2020

(c) **Constitution:** Annexed as **Appendix B**

(d) **Companies Office Record:** Annexed as **Appendix C**

4. Business

(a) **Company history**

The Company was incorporated on 26 February 2020 and has no trading history. At allotment, the largest shareholder of the Company is likely to be JAFL which is expected to hold 3,000,000 shares.



The Company's related company and prospective business partner, JAFL, was founded by Tony Gavigan B.Com, 64 in December 2007. JAFL has worked with leading New Zealand and Australian based lawyers and law firms since 2008. A history of JAFL's business activities is set out on pages 2-6 above. The Company intends that JAFL will provide administration and directorial services to the Company at appropriate rates. Tony Gavigan has agreed to act as director of the Company for five years from its incorporation.

(b) Litigation Funding Services for late stage class action projects

The Company will invest in class action litigation funding opportunities in New Zealand together with JAFL and other market participants.

JAFL has been assisting with the FeltexClaim which has resulted in prominent and important case law which governs certain principles relating to joint or "class actions" in New Zealand.

The Company's business strategy will be to become involved at the late stages of existing litigation projects worth supporting where risks can be considerably reduced by availability of Court judgments and appeal decisions rather early stage legal opinions as are typically obtained at the outset. Timeframes for completion of the litigation and likely quantum available to claimants are often more readily assessable and entitlement to interest and costs may have already accrued to the claimant group by the latter stages of a claim. Some overseas funders and their funds under management are precluded by their own rules and constitutions from becoming involved in existing litigation projects. Sometimes, existing funders and insurers have already reached their project limits. The Company believes these constraints on other market participants present it with an opportunity.

The litigation funding and security for costs markets in New Zealand are developing and are at present immature. The Company believes it will be able to identify and access attractive investment opportunities in the foreseeable future and to lead and structure appropriate security for costs solutions.

The Company may, in due course, fund disputes in New Zealand concerning high net worth estates or assets, where those disputes satisfy the Company's own strict investment criteria, including the availability of security. The Company will not fund litigation heard outside New Zealand, except in respect of enforcement proceedings arising out of New Zealand based litigation, nor will the Company fund litigation against any branch of the New Zealand Government or any of the major New Zealand trading banks.

The Company will require JAFL to secure expert commercial litigation advocacy, including from experienced QC's and junior counsel as the Company deems appropriate.

The Company may fund project costs for work provided by related parties including, where appropriate, legal work by Patricia Mills Barrister (who is related to the Company because she is the life partner of Tony Gavigan) and project administrative services provided by Nicholas Gavigan, and potentially, in the future, legal work provided by Timothy Gavigan. Any such services will be provided to the Company on arm's length market terms and the Company will disclose such dealings on a quarterly basis. The Company may also fund the costs of litigation services provided by major Australasian law firms with expertise in class actions.

(c) Organisational Structure

The Company will operate as a stand-alone business. It will invest directly in the costs of late stage class action litigation and other commercial litigation projects where the Company considers it can achieve gross rates of return (from which costs, tax and other contingencies must be paid by the Company before any return to investors is paid) of generally not less than 100% flat (2 for 1) for limited recourse funding, or market rates of return where security can be and is provided. The Company may provide cash-backed (or cash guaranteed) security for costs solutions using its own funds. The Company will have no employees and no overheads other than administration (including director fees, treasury and company secretarial costs). Johnston Associates Chartered Accountants



Limited will assist with these requirements at arm's length market rates. Company director Logan Granger is a partner of Johnston Associates. Independent auditors will be appointed by the Company after the closing of the Offer to audit its activities on an annual basis.

(d) Sources of income

The Company intends to earn fees and interest and/or acquire interests in resolution sums from litigation projects it funds. Stage Two of the FeltexClaim is the initial project in which the Company will invest. Details of the history of that project are at pages 2-6 above.

In the minimum and maximum capital raising scenarios set out in the table in (e) below, the fees charged by the Company to the relevant parties in the funded litigation would be 100% of \$70,000 plus \$330,000 (i.e. \$400,000 in the minimum case); and 100% of \$2,000,000 plus \$2,580,000 (i.e. \$4,580,000 in the maximum case). Whether the Company is paid those fees and entitlements would depend on the extent to which the funded litigation is successful.

The Company's interest in \$6,000,000 of JAFL's accrued fee entitlements will mature over time if and when the FeltexClaim produces compensation sums for the Claimants and will be subject to the respective priority interests of all parties who have invested in the FeltexClaim through the JAFL structure. Further details about these co-funding arrangements can be found under the heading on page 5 "*Calculation of return to investors under the offer*". The shares in the Company will be held by JAFL on behalf of all its shareholders and co-funders for their respective rights and interests. JAFL may sell up to 500,000 shares in the Company in the first year after allotment for JAFL's working capital and liquidity purposes.

Upon maturity the Company will be liable to pay income taxation on any profits it makes on its investments.

(e) Use of funds

Tentative start date for use of funds – Post Crowd Funding – approximately 1 June 2020

(All figures exclude GST)	Minimum 500,000 New Ordinary Shares	Maximum 5,000,000 New Ordinary Shares
Funds raised at \$1 per share	\$500,000	\$5,000,000
Capital raising costs	(\$50,000)	(\$320,000)
Net funds raised	\$450,000	\$4,680,000
Available for investment in litigation projects	\$70,000	\$2,000,000
Available for cash backed security for costs solutions or adverse costs insurance premiums	\$330,000 ⁽¹⁾	\$2,580,000 ⁽²⁾
Company's working capital	\$50,000	\$100,000
Total	\$450,000	\$4,680,000

Notes: (1) For example, purchase of court ordered \$1.65m adverse costs insurance cover for Stage Two of the FeltexClaim.

(2) Alternatively, a higher level of security for costs cover for Stage Two of the Feltex Claim could be 100% cash backed or could be delivered by a mixture of some adverse costs insurance cover and some cash backed security. Cash funds used to back security for costs solutions will be held by the Company in low risk New Zealand Government backed or prime bank securities or similar.



(f) Additional and Future Funding

JAFI and Tony Gavigan have agreed to provide directorial and administration services to the Company at arm's length commercial market rates. Initial directors' fees have been set at modest levels.

The Company's constitution provides for placement on arm's length terms to exempt investors of ordinary share capital up to 15% of the total issued capital of the Company in any one year.

If the Company accepts any oversubscriptions, which it may do at any time in its first year from the date of this offer at no less than \$1.00 per share (up to a maximum of \$5 million from exempt investors), the funds available for investment in litigation projects including the provision of cash-backed security for costs solutions could increase by up to a maximum of \$4,700,000 (being \$5,000,000 less capital raising costs). It is expected that interest income earnings from the Company's low risk cash deposits will cover any increase in administration costs including audit fees.

The Company has no current plans to raise additional capital, other than as outlined above. It is possible that further issues of the Company's shares, subject to any necessary shareholder approval, may provide a useful mechanism to facilitate alignment or aggregation of interests in, or resolution of, the FeltexClaim or other future litigation investments.

(g) Exit Opportunities

Investors should understand that this is an illiquid investment. Shares are being offered to investors on the basis that the Company will endeavour to be in a position to generate a strong dividend flow on any success of the projects in which its funds are invested. See paragraph 8 below which includes details of how to trade shares. See also paragraph 11 below which includes further details on how the Company expects the proceeds of any successful litigation projects to be dealt with.

At that time, the Company may be able to offer to repurchase at fair value the ordinary shares being subscribed (see paragraph 7(d) below). The structure of the Offer is also intended to promote an alignment amongst all the parties who have assisted the Feltex Claimants to date. These include providers of claimant seed capital in 2006/07, parties to the JAFI Agreements and the co-funding Investment Agreements entered with JAFI since 2010. If and when alignment can be achieved it would create an entity of some size that may be able to comply with a listing agreement at some stage in the future.

5. Directors

Anthony (Tony) John Gavigan See page 12 above.

Logan Granger. See page 12 above.

6. Shares and Shareholders

(a) Tony Gavigan holds the original one ordinary share issued on incorporation of the Company.

(b) After the initial offer is completed, 3,000,000 ordinary shares will be held by JAFI and between 500,000 and 5,000,000 Ordinary Shares will be owned by new investors. If the maximum number of over subscriptions are accepted in the subsequent offer, the total number of ordinary shares on issue will be 13,000,000 with the community holding 77% and JAFI holding 23% of the Company's shares.

7. Share Details

(a) The shares being offered are fully paid ordinary shares.



You can read more about the rights attached to ordinary shares in the Company's Constitution at **Appendix B**.

(b) Shareholder Details

Shareholders	Class	Pre-offer		Post Offer (min raise)		Post Offer (max raise)	
		Number	%	Number	%	Number	%
Tony Gavigan	Ordinary	1	100	1	0.0	1	0.0
JAFI	Ordinary		0	3,000,000	85.7	3,000,000	23.0
Investors	Ordinary		0	500,000	14.3	10,000,000	77.0
Total		1	100	3,500,001	100	13,000,001	100

(The maximum raise number includes maximum oversubscription and allotment.)

(c) Dividends and repurchase of shares: Ordinary shares deliver the right to an equal share in dividends and other distributions made by the Company as well as the right to an equal share in the distribution of surplus assets of the Company. The Company's profits will be distributed as dividends where the Company's directors consider that cashflow allows. It is anticipated (but not guaranteed) that an offer will be made to repurchase investor shares in the Company upon successful resolution of the FeltexClaim (if successful resolution occurs).

(d) Future capital raising plans: There is no immediate plan to raise extra capital from investors in the near future except as disclosed in paragraph 4(f) above.

(e) Share Register: The Company will manage its share register using JAFI's or Johnston Associate's administration teams who will be engaged at market rates and on an arm's length basis.

8. How to Trade Shares

Shares in the Company are illiquid and there is no open market to trade Company shares. There may be instances where you would like to withdraw from your investment. Should this be the case, the directors will keep a register of current and prospective shareholders wishing to transact. Refer to paragraph 4(g) above. Any shareholders wishing to sell their shares may be introduced to potential investors on the waiting list for shares. It will, however, be the investor's and potential investor's responsibility to trade the shares at a value agreed between the parties. Fees may be charged for this service. JAFI or the Company may also consider buying the shares but shall not be obliged to do so in any circumstances. Accounting information can be sought from the Company to determine the present value of the shares. No responsibility will be taken by the Company or the directors in relation to the deemed or negotiated value of the shares traded. Legal and tax advice on any trading of shares should also be sought.

9. Risks

The Company has highlighted in this Offer what it considers to be the perceived strengths of its business plan and the opportunities for growth of its capital base. However, there are certain risks that are inherent in running any business, and particular risks inherent in running a litigation funding business, including but not limited to those set out below. The Company will try to mitigate those risks and to minimise their impact should they arise but this will not always be possible.

(a) Litigation Risks:

(i) Failure to win or enforce remedies: No case is certain to succeed or to produce a particular outcome. New Zealand's judiciary is operated by learned and honourable Justices who may have subjective differences of background and approach. Different High Court Judges may take valid yet different approaches within the same legal system and arrive at different conclusions on the same facts. The same is true of the appellate courts, the Court of Appeal and the Supreme Court. Cases won at the initial High Court level can be lost on appeal and vice versa. Sometimes leave is required to be obtained before an appeal can be heard in a higher Court. Because High Court cases are normally heard



by one Judge alone, the results can be more volatile than in the higher courts. The Court of Appeal typically sits as a panel of three judges, but the selection of the panel can vary and may be important to the end result. The Supreme Court typically sits as a panel of five senior judges and is generally considered the most reliable in terms of intellectual analysis of law and fact and so predictability of outcome. The influences on end results of litigation may be subtle and may vary from time to time, province to province and country to country. The commercial outcome can be different from what was expected or advised at the outset. Even once a judgment is won and survives appeal it has to be enforced against a defendant or insurer who is solvent, and the ability to produce a tangible remedy can be lost on enforcement, especially as the financial position of the relevant defendants can change over the course of the litigation. By way of mitigating these risks, the Company will fund only New Zealand based litigation and will not fund any cases brought against the New Zealand Government or major New Zealand trading banks. The Company believes that historically and fundamentally, the odds are not in favour of success for such actions. Where possible, cases with social merit and general public support will be selected for funding (although the Company will determine whether such criteria is met, and may choose to fund litigation which does not fit these parameters). The ability of defendants or their insurers to meet a judgment in due course will be researched, advised and monitored, as will the ability of judgments to be enforced (including in overseas jurisdictions). The rights to charges over proceeds of insurance policies under the Law Reform Act 1936 will be asserted and defended (as has been done by Mr Houghton in the context of the FeltexClaim, as confirmed in the *Steigrad* case). Only lawyers with an appropriate mix of expertise and experience will be retained at market rates and they will be required to report promptly on developments. The legal team instructed will be reviewed from time to time in conjunction with the instructing solicitor to ensure its advocacy is effective and its various roles appropriate. Where it is perceived that a Judge should recuse him or herself, such applications will be made if supported by QC advice to that effect. Appeals will be made and defended where this makes commercial sense and sufficient funding for such late stage appeals will be provided for at the early stages of involvement by the Company where reasonably possible.

(ii) **Adverse costs awards and recovery of own side costs:** Costs awards generally follow the event, or outcome, of the case. Costs incurred or recovered do not generally equate to the actual cost but are determined by a court ordered scale under the applicable court rules. The scale is intended to reimburse two thirds of the actual cost. Uplifts can be applied for and obtained and the principle behind say a 50% uplift is to restore the award from the scale two thirds to 100% of actual cost. Sometimes indemnity costs can be ordered which result in a higher proportion of costs being awarded. Reimbursement of disbursements can be determined by the trial or appeal Judge(s) and sometimes separate hearings are required to determine quantum. At other times, the disbursements can be fixed by the Court Registrar. Costs can be awarded against non-parties including litigation funding entities. Costs awards are discretionary and recoveries may be less than expected. Certain costs cannot be recovered by successful claimants from defendants including (as decided by the Court of Appeal last year in *Houghton v Saunders*) the costs of after the event (or adverse cost) insurance (ATE) premiums. By way of mitigating these risks, experts will be retained as appropriate to assess the exposure to and recovery of costs. Where prudent, adverse costs protection will be obtained or otherwise backed by cash held by the Company, including where such protection is available by statute (in certain circumstances) and where protection is available by way of insurance (including ATE insurance, although this brings its own set of risks, as discussed below at paragraph 9(b)). However, investors should be aware that adverse costs awards, will, depending on the overall outcome of the particular litigation, reduce or even eliminate any share of Resolution Sums due to the Company. In the context of the FeltexClaim, the amount of any possible adverse costs award versus the amount of any compensation sought (if awarded) is low, and is therefore unlikely to affect the amount due to the Company from JAFL. However, if the Court declines to award compensation to the Claimants, then neither the Company (nor its investors) will receive a return on investment, and in addition, Mr Houghton or JAFL or Tony Gavigan may have adverse costs awards made against them in favour of the Feltex defendants.

(iii) **Delay and uncertainty of timeframes:** The biggest variable in pursuing legal remedies is time. Delays should be considered to be inevitable. For example, in the FeltexClaim, the following major events and delays have arisen: the 2008 GFC (Global Financial Crisis) meant no professional litigation funding was available to fund Mr Houghton until 2010/11, and then only from overseas sources; the pioneering nature of joint or class actions in New Zealand in 2008 resulted in multiple defendant appeals that took until early 2014 to resolve; the Christchurch Earthquakes in 2010 and 2011 ultimately



resulted in a change of both venue and High Court trial Judge; and the Covid-19 shutdown of New Zealand and many other countries is likely to be the most recent disruption. Planning is the most effective form of mitigation here - the Company's litigation plan and financial structure will factor in likely or probable delays. Patience is a valuable tool and will be employed by the Company as reasonably required.

(iv) Exhaustion of capital and working capital: Because of the above factors and the general rule that it nearly always takes longer and costs more than anticipated, there is a risk that working capital can be exhausted before the desired result is obtained. The Company can mitigate this risk by working within its projected resources from time to time and by negotiating deferred payment, success based and fixed price terms for legal services and adverse costs insurance.

b) Other risks

The litigation funding industry in New Zealand is in its infancy. It has been developed this century by the court using its inherent jurisdiction. This does not mean that the torts of maintenance and champerty have been done away with in New Zealand, they are merely superseded in certain cases by the orders of the courts permitting funding arrangements where this is deemed just and appropriate. Funding arrangements must therefore be scrutinised and approved by the Courts.

In the case *Giles v Thompson* [1993] UKHL 2, Lord Justice Steyn declared: "*In modern idiom maintenance is the support of litigation by a stranger without just cause. Champerty is an aggravated form of maintenance. The distinguishing feature of champerty is the support of litigation by a stranger in return for a share of the proceeds.*"

The rules applying to litigation funding in Australia were changed after the 2006 decision in the *Fostif* case. IMF Litigation Funding Limited allowed JAFI to use the form of its agreement for the JAFI Agreement in the *Houghton* case. The form of the JAFI Agreement was approved and amended by the Court in New Zealand. The rules applying to litigation funding can be changed by the courts from time to time. For example opt-out (where a claimant can be included in a class action group unless he or she opts-out) was not permitted by Justice French in 2008 in the *FeltexClaim* and that decision was not appealed. However, opt out was allowed last year by the Court of Appeal in Stage One of the *Southern Response* case. The Company believes that, in practical terms, opt in will be required in most cases by the second or compensation stage and failure to do so could allow free riders to piggy back a claim for free or enable late stage competition amongst funding providers for claimants. The Company sees this as a risk and also as an opportunity.

The litigation funding industry and its practices could at any future time be codified or regulated by statute or otherwise, as already exists in England. Furthermore, there remains a risk that New Zealand's courts may not allow some forms of litigation funding, or may prevent new proceedings being funded by litigation funders. JAFI's role in *Houghton v Saunders* has been approved by the Supreme Court in 2014.

The selection and direction of litigation projects requires experience and skill. The commercial objectives of the funder may not always align with those of the lawyers engaged and may be in conflict with them from time to time. Likewise adverse costs insurers may prefer to accept an early or low settlement sum to resolve their risk in a matter being litigated. These factors and others may in practice mean that the outcome of a litigation project is not, or is not permitted to be, in the Company's control.

The Company will seek to mitigate the above risks by seeking to closely align its objectives and commercial outcomes with those of the claimants whose claims it is funding. Claimant rights to approve any settlement offers will be entrenched in funding and insurance agreements. For the avoidance of any doubt, in return for the additional upside in the *FeltexClaim* obtained by the issue of 3 million shares to JAFI, the Company will still be required to seek to maximise the outcome for the *Feltex* Claimants in accordance with the terms of the JAFI Agreement and subject to an acceptable outcome of its negotiations with co-funder HLIF LP, and in that sense, the interests of the Company may sometimes need to be subordinate to the interests of the Claimants.



10. Related party disclosures

- (a) Company shareholder, JAFL will supply project management and directorial services to the Company on arms' length, commercial terms.
- (b) Tony Gavigan is the managing director of the Company and is also the managing director of JAFL.
- (c) As a start-up, JAFL has relied heavily in the FeltexClaim on the support and work product, including paid and not yet paid work, and including legal and administrative services provided by family members associated with Tony Gavigan. These include services provided by his sons Timothy Gavigan LL.B, B.Com and Nicholas Gavigan B.Com, and by Patricia Mills, Barrister (who is Tony Gavigan's life partner since 1996) at normal market rates from time to time. Interest is not payable on any deferred / not yet paid sums. Without the elasticity offered by the close Gavigan family commitment to, for example, the FeltexClaim project it would not have got off the ground nor survived through many years of near zero working capital. If the higher level of \$2,580,000 security for costs (refer table at 1(e) above) is provided from the funds raised by this Offer, this may release cost recovery awards in the FeltexClaim which are not yet payable until such security for costs has been provided. Some or all of these costs recoveries (if any) from this source may be due to the lawyers (including Patricia Mills) or JAFL's co-funders as referred to above.
- (d) Related party transactions will be disclosed to the Company's shareholders quarterly and the Company will also disclose such transactions to the Claimant committee created pursuant to the JAFL Agreement as well as to JAFL's relevant co-funders.

11. Financial Information

The revenue for the Company will be derived solely from participation in the Resolution Sums from the successful outcomes of cases funded. The term Resolution Sums is as defined in the JAFL Agreement, a copy of which is on the Collinson website. The initial costs of the Company (including the costs of its capital raisings) will be expensed in this initial period, resulting in a trading loss equal to those amounts in total. There is no guarantee that projected results will actually materialise. Investors may not receive any return on their investment. If the outcome of Stage Two of the FeltexClaim is bad or there is no compensation awarded to the Claimants the Company will suffer a loss equal to all or most of its entire capital base.

Year 1 (Financial period ending 31 March 2021)

It is unlikely, but not impossible, that any income will be earned in the period ending 31 March 2021 except in the case of a negotiated settlement of the FeltexClaim. The result of any Stage Two hearing and any compensation that may be awarded by the High Court is likely to be appealed and may be held in trust, as in the recent *Mainzeal* case.

Year 2 (Financial year ending 31 March 2022)

Apart from a possible marking to market of the Company's investments in receivables from resolution sums, the Company believes there is a less than 50% possibility that the income streams set out below (which the Company believes are more probable to arise in Year 3) will have been received.

Year 3 (Financial year ending 31 March 2023)

By this stage, JAFL and the Company believe that the compensation from the FeltexClaim should be settled, having been through all possible appeals. Assuming compensation is awarded to the Claimants, the Company currently believes enforcement against AIG should be straightforward as long as it remains solvent in New Zealand.



The Second and Third Defendants are part of Credit Suisse's private equity business. Credit Suisse are a secondary party to the AIG IPO policy and also typically self-insure issuance risks. It is expected that the Third Defendant, an entity registered in Delaware, may have no assets other than its interest in the AIG policies. The Second Defendant was an issuer of the Feltex shares and is part of the entity listed on the NYSE and SWX under code CS or CSGN, which has a current market capitalisation of approximately USD 22 billion. At present, it holds an A- Fitch Rating. However, the value of Credit Suisse's shares can and do fluctuate wildly and its solvency remains a risk to be taken into account in assessing whether it will be able to pay any compensation award made against it. Note that during the course of the FeltexClaim, Credit Suisse's share price has peaked at CHF 87 in May 2007, to a current price of around CHF 8.

Credit Suisse has defended Houghton's proceeding since 2008 and this fulfils one of the criteria required for being able to enforce any New Zealand Court money judgment in New York. However, if compensation is awarded by the New Zealand courts against Credit Suisse, it will be necessary to enforce any judgment in US law proceedings in New York. It is unclear how long these proceedings could take, how much they would cost or whether the US courts would agree to enforce the New Zealand judgment against Credit Suisse.

Payment of AIG's share of Resolution Sums to the Company and/or JAFL could result in the following cash flows within the next 3 years in the minimum and maximum capital raising scenarios:

(*All figures exclude GST and income tax)	Minimum 500,000 New Ordinary Shares Issued	Maximum 5,000,000 New Ordinary Shares Issued
Gross fees from investment In Litigation Projects	\$70,000	\$2,000,000
Gross fees from providing Cash Backed security for costs solutions or ATE premiums or investment in litigation projects	\$330,000	\$2,580,000
Potential realisation of profit on JAFL entitlement acquired from issue of 3,000,000 shares to JAFL	\$3,000,000	\$3,000,000
Total	\$3,400,000	\$7,580,000
Gross Earnings per share Before Tax including 3,000,000 Shares held by JAFL	\$0.97	\$0.95

If oversubscriptions of up to 5,000,000 shares are accepted by the Company in the subsequent offer described in paragraph 2 of Appendix A, the gross earnings per share in the maximum case scenario above will be diluted depending on the earnings from investing the additional net capital raised. If, for example, another \$4,700,000 is earned by the Company (for example from providing security for costs solutions in litigation projects other than the FeltexClaim) in the 3 year estimated period, the diluted earnings per share could be $\$7,580,000 + \$4,700,000 = \$12,280,000 / 13\text{m shares} = \0.94 gross before tax per share. There is no guarantee that these, or any earnings will transpire.

***Note: The pre-tax projections in the table above have been calculated based on the assumptions made as set out in this Offer and based on the minimum and maximum amounts of \$500,000 and \$5,000,000 respectively being raised by the initial Offer, and the issue of 3,000,000 shares to JAFL. These projections do not take account of the impact of any shares being issued in the subsequent Offer in the case of an oversubscription.**

(b) Historical Financial Information

As it is a new company, the Company does not have any historical financial information.



12. Important information about the offer

Collinson Crowdfunding is licensed and regulated by the Financial Markets Authority and this offer is only available for acceptance via Collinson Crowdfunding's website or by investors who qualify as wholesale investors under the Financial Markets Conduct Act 2013.

Additional information about the offer and the Company may be added to the Collinson Crowdfunding website campaign page from time to time. The information about the offer is confidential and has been compiled by the Company from information believed to be reliable.

The Offer does not constitute, and is not intended to be, an offer to any parties or to any persons outside of New Zealand where such an offer is not authorised or is illegal. Anyone receiving this offer outside of New Zealand must ensure that they fully comply with all applicable laws in their own jurisdiction before accepting an offer. Without limiting the previous statements, the Company and Collinson Crowdfunding reserve the right to decline any acceptance or notice of intention to make an offer from a person outside of New Zealand.

13. Warning Statement for crowd funding investors

Equity crowd funding is risky.

Issuers using this facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks.

You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to offers by issuers using this facility. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.

14. Warning Statement for certain wholesale investors

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment. Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.



APPENDIX B

CONSTITUTION OF JAFL LITIGATION FUNDING PARTNERS LIMITED

*Adopted by special resolution of the sole
shareholder on 2020*

INTERPRETATION

1. *Definitions*

1.1 In this constitution the following expressions have the following meanings:

Act	the Companies Act 1993;
Company	JAFL Litigation Funding Partners Limited (NZCN: 7896701);
constitution	this constitution as it may be altered from time to time in accordance with the Act;
Director	a person appointed as a director of the Company in accordance with this constitution;
Share	a share in the Company;
Subscription Agreement	a subscription agreement made between a shareholder and the Company;
written or in writing	in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to clause 1.1, expressions which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

1.3 In relation to each shareholder, if there is a conflict between a Subscription Agreement made between that shareholder and the Company, and this constitution, the Subscription Agreement will prevail.

1.4 In this constitution:

- 1.4.1 Headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- 1.4.2 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 1.4.3 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 1.4.4 A reference to *permitted by the Act* means not prohibited by the Act;
- 1.4.5 The Schedules form part of this constitution.

2. **Shares and Shareholders**

- 2.1 Section 45 of the Act applies to the Company, except in relation to:
 - 2.1.1 The issue of Shares by the Company which would amount to more than 15% of the capital of the Company, in one transaction or a series of related transactions, per annum.
 - 2.1.2 The initial offer of up to 5,000,000 shares, and the subsequent offer of up to a further 5,000,000 shares in the Company pursuant to the Offer summary document dated on or about the date of this Constitution.
- 2.2 Subject to this constitution:
 - 2.2.1 Save as expressly provided in this Constitution, a Board resolution specifying any specific terms attaching to Shares or as otherwise required by law, all Shares will rank *pari passu* in all respects..
 - 2.2.2 The Board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares without affecting the rights of existing shares under section 117 of the Act.
- 2.3 Ordinary Shares shall have the following rights attached to them:
 - 2.3.1 The right to receive notice of and attend every meeting of shareholders;
 - 2.3.2 The right to one vote on a poll at a meeting of the Company on any resolutions;

- 2.3.3 The right to an equal share in dividends authorised by the Board; and
- 2.3.4 The right to an equal share in the distribution of the surplus assets of the Company.
- 2.4 Ordinary Shares will not be redeemable.
- 2.5 The Board may consolidate and divide, or subdivide, Shares or any class of Shares in proportion to those Shares or the Shares in that class.
- 2.6 The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered shareholders as at 5 p.m. on a day not more than 2 working days before the meeting will be the only persons entitled to exercise the right to vote at that meeting.
- 2.7 A holder of securities of the Company or a transferee may request the Company to register the securities held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the holder of the securities, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.
- 2.8 The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) if permitted to do so by the Act.
- 2.9 The Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issues of those Shares. The Company has a lien on all of a shareholder's Shares and all dividends authorised in respect of such Shares for unpaid calls and instalments in respect of such Shares.
- 2.10 If an amount called in respect of a Share is not paid before or on the time appointed for payment, the persons from whom the amount is due will pay interest on that amount from the time appointed for payment thereof to the time of actual payment at such rate not exceeding 10% per annum as the Board may determine, but the Board may be at liberty to waive payment of that interest wholly or in part. The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

- 2.11 The Company may:
- 2.11.1 Purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and
 - 2.11.2 Make an offer to one or more holders of Shares to acquire Shares issued by the Company in such numbers or proportions as it thinks fit,
- in accordance with the Act.
- 2.12 The Company may:
- 2.12.1 Issue or redeem redeemable Shares; and
 - 2.12.2 Exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares,
- in accordance with the Act.
- 2.13 The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.
- 2.14 No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue of an equity security expressly provide otherwise.
- 2.15 All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.
- 2.16 Notwithstanding anything in the Act, JAFL shall not be entitled to transfer any shares within 12 months of the adoption of this constitution, provided that JAFL will be entitled to transfer to any other party up to 500,000 of its shares during that period.

3. ***Proceedings at Meetings of Shareholders and Interest Groups***

3.1 The First Schedule to the Act governs the proceedings at meetings of shareholders except as follows:

3.1.1 A proxy form must be sent with each notice of meeting, in such form as the Board may direct. No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or an adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

3.1.2 Where:

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

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

3.1.3 A shareholder may exercise the right to vote at a meeting by casting a postal vote only if the Board, prior to the giving of notice of a meeting, has so determined.

3.1.4 Except as provided in the First Schedule to the Act, the chairperson of a meeting of shareholders may regulate the proceedings at the meeting.

4. **Directors**

- 4.1 Any natural person who is not disqualified under the Act may be appointed as a Director by an ordinary resolution of shareholders.
- 4.2 The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors. Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the Company, but shall be eligible for election at that meeting.
- 4.3 The persons holding office as directors of the Company on adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.
- 4.4 The Directors may elect one of their number as chairperson and, if they so determine a deputy chairperson, of the Board.
- 4.5 The chairperson of the Board and, if one has been elected, the deputy chairperson of the Board holds that office until he or she vacates that office or the Directors elect a chairperson or deputy chairperson (as the case may be) in his or her place.

5. **Meetings of the Board**

- 5.1 The Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.
- 5.2 A written resolution signed or assented to by a majority of the Directors then entitled to receive notice of a meeting of the Board and who together would constitute a quorum at a meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Within 5 working days of a resolution being passed in accordance with this clause, the Company must send a copy of the resolution to every Director who did not sign the resolution or on whose behalf the resolution was not signed.
- 5.3 Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

- 5.4 In exercising the Board's delegated powers, any committee of Directors, Director, employee, or any other person must comply with any regulations that the Board may impose.
- 5.5 The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.
- 5.6 A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director without requiring the prior approval of shareholders.
- 5.7 Every Director may:
- 5.7.1 Appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, to act as an alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and
- 5.7.2 Remove his or her alternate Director from that office,
- by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director from that office.
- 5.8 While acting in the place of the Director who appointed him or her, an alternate Director:
- 5.8.1 Has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);
- 5.8.2 Is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.

- 5.9 The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director.
- 5.10 Director remuneration will be set at \$20,000 plus expenses per Director per annum for the first year of the Company's trading. Any increase in Director remuneration must be approved by an ordinary resolution of shareholders.
- 5.11 The Board shall be entitled to engage related parties to undertake professional and administrative services on behalf of the Company at arms' length market rates, provided that the Company shall keep a register of all such services which shall be made available to shareholders on request.
- 5.12 The Board shall be required to engage an independent auditor to review the Company's activities on an annual basis.

6. **Tag Along Rights**

- 6.1 If a shareholder (or group of shareholders) proposes a transfer of Shares and which, together with any related transactions, would constitute a sale of 20% or more of the shares in the Company, the proposing transferor must first give notice in writing to the remaining shareholders of their intention to sell their shares, before making the proposed transfer and procure the proposed transferee to make a legally binding offer to the remaining shareholders to acquire all of their Shares (or a pro rata proportion equivalent to the proportion of Shares being purchased from the proposing transferor) on the same terms.
- 6.2 The offer referred to in clause 6.1 must be expressed to be capable of acceptance for a period of not less than 14 days and if it is accepted by any shareholder within that period, the completion of the proposed transfer will be conditional upon the proposed transferee tendering completion of the purchase of all of the Shares held by each accepting shareholder.

7. **Drag Along Rights**

- 7.1 If the holder(s) of [60%] or more of the Shares propose to sell all of their Shares to a proposed third party purchaser (or purchasers acting in concert) who has made a bona fide legally binding cash offer on arm's length terms for all of the issued Shares conditional only on achieving sufficient acceptances (**Offer**), the proposing

transferor(s) will have the right to give to the Company written notice, requiring the Company to drag the other shareholders. That notice (**Selling Notice**) will include details of the price offered for each Share, details of the proposed transferee and the place and time for completion of the Offer (being the same terms in all respects offered to the proposing transferor(s) for their Shares).

- 7.2 Immediately upon receipt of the selling notice, the Company will give notice in writing (**Drag Along Notice**) to each of the shareholders (other than the proposing transferor(s)) giving the details contained in the selling notice and requiring each of them to sell to the proposed transferee at completion all of their holdings of Shares on the terms contained in the Drag Along Notice subject to the provisions set out below.
- 7.3 Each shareholder who is given a Drag Along Notice will sell all of their Shares referred to in the Drag Along Notice (contemporaneously with the proposing transferor(s)) on the terms set out in the Drag Along Notice. However in no circumstances will any such shareholder be required to provide any warranties or indemnities to the proposed transferee save as to title, capacity and authority to sell all of their Shares pursuant to the Drag Along Notice.
- 7.4 If any shareholder fails to comply with clause 7.3, the Company will be constituted the agent of that shareholder for the sale of the respective Shares in accordance with the Drag Along Notice and the board may authorise any person to execute and deliver on behalf of, and as attorney for, each defaulting shareholder the necessary instrument(s) of transfer. The Company's receipt of the purchase price will be good discharge to the proposed transferee and the Company will be solely responsible to account to the defaulting shareholders.

8. **General**

- 8.1 The Company shall indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.
- 8.2 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under

the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

8.3 For a period of 12 months after a director ceases to act as such, he/she will not be entitled directly, or indirectly, compete in any material way with the Company's business as a New Zealand based litigation funder.

8.4 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by a Director, or any other person authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

8.5 If the Company is liquidated the liquidator may, with the approval of shareholders by special resolution, but subject to any other sanction required by the Act:

8.5.1 Divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

- (a) Fix such values for surplus assets as the liquidator considers to be appropriate, and
- (b) Determine how the division will be carried out as between shareholders or different classes of shareholder; and

8.5.2 Vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

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

8.6 A notice may be served by the Company upon any Director or shareholder by email to the email address of such director or shareholder. Any notice transmitted:

8.6.1 Will be deemed to be received on the business day on which it arrives in the recipient's information system; or

8.6.2 If received in the recipient's information system after 5.00 pm on a business day, or at any time on a non-business day, will be deemed to be received at

9.00 am on the next business day, being, in each case, the time of day at the intended place of receipt of that notice.

8.6.3 If there is any dispute as to whether an email has been received, the email shall only be deemed to have been received at the time that the party giving notice produces a printed copy of the email which evidences that the email was sent to the correct email address of the party given notice.

8.6.4 Each director and shareholder will immediately notify the Company if their email address changes.

SCHEDULE: PROCEEDINGS OF THE BOARD

I. **Notice of Meeting**

- I.1 A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.
- I.2 The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.
- I.3 The notice of meeting must include the date, time and place of the meeting and the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.
- I.4 At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, the deputy chairperson (if any), and in the deputy chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given. Any such shorter notice may be given by telephone communication or facsimile or email to each Director at the telephone number or facsimile or email address provided to the Company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.
- I.5 If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or physical or email address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.
- I.6 Any irregularity in the notice of a meeting, or failure to comply with *clauses 1.1 to 1.5* of this Schedule is waived if all Directors entitled to receive notice of the meeting

attend the meeting without protest as to the irregularity or failure, if all Directors entitled to receive notice of the meeting agree to the waiver.

2. **Meeting and Quorum**

2.1 A meeting of the Board may be held either:

2.1.1 By a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

2.1.2 By means of audio, or audio and visual, communication by which all Directors participating can simultaneously hear each other throughout the meeting.

2.2 Unless otherwise determined by the Board the quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

2.3 If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next 2 days. If no such adjournment is made the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

3. **Chairperson**

3.1 The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

4. **Voting**

4.1 Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting

on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

- 4.2 The chairperson of the Board has a casting vote, except in the case of an equality of votes where two Directors form a quorum, the chairperson at a meeting at which only two Directors are present does not have a casting vote.

5. **Minutes**

- 5.1 The Board must ensure that minutes are kept of all proceedings of meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

6. **Other Proceedings**

- 6.1 Except as set out in this Schedule, the Board may regulate its own procedure.



Certificate of Incorporation

J AFL LITIGATION FUNDING PARTNERS LIMITED

7896701

NZBN: 9429047963726

This is to certify that J AFL LITIGATION FUNDING PARTNERS LIMITED was incorporated under the Companies Act 1993 on the 26th day of February 2020.



Registrar of Companies
28th day of April 2020

