

Constitution

The Co-operative Bank Limited (the **Company**)

I certify this document to be a true and correct copy of the constitution of The Co-operative Bank Limited, approved by the Board for consideration by the Shareholders at the Annual General Meeting of the shareholders of the Company, to be held on 3 July 2024



Sarah Haydon
Chairman of the Board

Constitution

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Part 1 – The Company’s principal activity and purpose

1. The Company’s principal activity

The Company is a co-operative company whose principal activity is to provide financial services to its Shareholders.

2. The Company’s purpose

The Company’s purpose is to carry on its business in accordance with its Core Foundations while having an overall positive impact on society and the environment.

3. Capacity

Subject to this Constitution, the Act, the Co-operative Companies Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

4. Effect of this Constitution

The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act and the Co-operative Companies Act, except to the extent that they are negated or modified, in accordance with the Act or the Co-operative Companies Act, by this Constitution.

Part 2 – Features of Shares and the Board’s ability to issue additional Classes of Shares and alter rights attached to Shares

5. Class A Shares

5.1 The Board may issue Class A Shares to certain natural persons

The Board may issue from time to time a Class A Share to each natural person who holds a Transacting Product with the Company if:

- (a) he or she does not already hold a Class A Share; and
- (b) he or she:
 - (i) is a New Zealand citizen, a New Zealand permanent resident or is ordinarily resident in New Zealand at the time of issue; or
 - (ii) meets any alternative criteria that may be approved by the Board from time-to-time,

unless the Board determines (in its absolute discretion) that issuing a Class A Share to that person is inappropriate in the circumstances.

5.2 Features of Class A Shares

Each Class A Share in the Company:

- (a) has a nominal value of nil;
- (b) grants to the holder:
 - (i) if he or she is at least 16 years old (or any lower age at which the law requires voting rights to be granted), the right to one vote on each resolution put by the Company to Class A Shareholders for their consideration (or put to an Interest Group for its consideration if the holder forms part of that Interest Group) including a resolution to:
 - (A) appoint or remove a Director or auditor;
 - (B) approve the remuneration of the Directors;
 - (C) adopt a new constitution or alter this Constitution;
 - (D) approve a major transaction;
 - (E) approve an amalgamation of the Company; and
 - (F) put the Company into liquidation;
 - (ii) the potential right to participate in rebates and Distributions where the holder meets criteria determined by the Board; and
 - (iii) the right to Share in the distribution of the surplus assets of the Company on liquidation specified in clause 21,

provided that the holder still holds a Transacting Product with the Company at the relevant time when that right is being exercised;

- (c) cannot be transferred by the holder to another person;

- (d) does not grant to the holder the right to be offered the Shares of any existing Shareholders before they are transferred (if transfer is permitted by the terms of such Shares) to a person who is not a Shareholder or are acquired by the Company;
- (e) does not grant to the holder the right to participate in any Share issues the Company may make from time-to-time, including of any Shares that will rank as to voting or Distribution rights, or both, equally with or prior to the Class A Shares; and
- (f) will, where required by the Board, be forfeited by the holder or otherwise redeemed by the Company in the circumstances outlined in clauses 14 and 15, and otherwise where:
 - (i) the holder ceases to have a Transacting Product with the Company; or
 - (ii) the holder ceases to meet the requirements of clause 5.1(b).

6. Class B Shares

6.1 The Board may issue Class B Shares

The Board may issue from time-to-time a Class B Share to each non-natural person (such as a company, limited partnership or trust (acting through its trustees)), who holds a Transacting Product with the Company and begins transacting with the Company if:

- (a) it does not already hold a Class B Share in its own right; and
- (b) it:
 - (i) is domiciled in and operates or has a place of business in New Zealand; or
 - (ii) meets any alternative criteria that may be approved by the Board from time-to-time,

unless the Board determines (in its absolute discretion) that issuing a Class B Share to that non-natural person is inappropriate in the circumstances.

6.2 Features of Class B Shares

Each Class B Share in the Company:

- (a) will have a nominal value of nil;
- (b) grants to the holder the:
 - (i) right to one vote on any Interest Group Resolution, and otherwise does not confer any other voting rights including rights to vote on any poll being put solely to Class A Shareholders; and
 - (ii) potential right to participate in rebates and Distributions where the holder meets criteria determined by the Board;
- (c) is not transferable;
- (d) does not grant to the holder the right to be offered the Shares of any existing Shareholders before they are transferred (if transfer is permitted by the terms of such Shares) to a person who is not a Shareholder or are acquired by the Company;
- (e) does not grant to the holder the right to participate in any Share issue the Company may make from time-to-time, including of any Shares that will rank as to

voting or Distribution rights, or both, equally with or prior to the Class B Shares;
and

- (f) will, where required by the Board, be forfeited by the holder or otherwise redeemed by the Company in the circumstances outlined in clauses 14 and 15, and otherwise where:
 - (i) the holder ceases to have a Transacting Product with the Company; or
 - (ii) the holder ceases to meet the requirements of clause 6.1(b).

7. Board may issue additional Classes of Shares and alter rights attaching to Shares

Subject to the Act, the Co-operative Companies Act, this Constitution and the terms of issue of any existing Shares, the Board may:

- (a) issue additional Shares (and rights or options to acquire Shares) of any Class (including redeemable Shares) at any time, to any person and in such numbers as the Board thinks fit, which if they have a nominal value will have a nominal value of nil unless this Constitution is amended to attribute another value to these Shares;
- (b) issue Shares which rank equally with or in priority to existing Shares, whether as to voting rights or Distributions or both, and any such issue is deemed not to be an action which affects the rights attached to existing Shares; and
- (c) in the terms of issue of any or all Classes of Shares negate, alter or add to the rights attaching to any Share specified in section 36(1) of the Act,

provided that the voting rights attached to any such Shares will only grant to the holder the right to one vote per Share on any Interest Group Resolution, and otherwise do not confer any other voting rights including rights to vote on any poll being put solely to Class A Shareholders.

Part 3 – Rebates and Distributions

8. Rebates and Distributions

8.1 Rebates

The Company may give rebates to its Transacting Shareholders in the form of:

- (a) payments; or
- (b) Shares issued in accordance with section 31 of the Co-operative Companies Act in lieu, wholly or partly, of payments calculated in accordance with clause 8.2.

8.2 Calculation of rebates

For the purposes of clause 8.1, the Company may calculate rebates by reference to:

- (a) the number or value or volume of, or the profit derived by the Company from, transactions by the Transacting Shareholders with the Company; and
- (b) any other factor or factors it considers relevant from time-to-time such as tenure.

For the avoidance of doubt, this may mean (amongst other things), that the Board may elect not to give a rebate to a Transacting Shareholder where the number or value or volume of, or the profit derived by the Company from, transactions by that Transacting Shareholder is insufficient in a particular case.

8.3 No interest on unpaid Distributions or rebates

The Company will not pay interest on any unpaid Distribution or rebate.

8.4 Unclaimed rebates and Distributions

Any unclaimed rebate and Distribution:

- (a) which, in the case of a Distribution has been unclaimed for one year after having been declared, may be invested or otherwise made use of by the Board for the benefit of the Company until claimed;
- (b) may be mingled by the Company with other money of the Company and will not be required to be held on trust by the Company;
- (c) will be paid, subject to compliance with the Solvency Test, to any person producing valid evidence of entitlement to that rebate or Distribution within five years of it having been declared; and
- (d) which has been unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company provided always that the Board may at any time after such forfeiture annul the same and pay the rebate so forfeited to any person producing valid evidence that he or she is entitled to the same and will do so unless in the opinion of the Board such payment would not be in the best interests of the Company.

Part 4 – Shareholders’ meetings

9. Shareholders’ meetings

9.1 Annual Meeting

The Board must call an Annual Meeting of Shareholders in accordance with the Act.

9.2 Business of an Annual Meeting

The business of an Annual Meeting will be to consider any matter or matters required by law to be put to that meeting together with any other business specified in the notice convening the Annual Meeting.

9.3 Special Meeting

A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board;
- (b) must be called by the Board at the written request of the Electoral Oversight Panel; and
- (c) must be called by the Board at the written request of Class A Shareholders holding Shares carrying together not less than five percent of the voting rights entitled to be exercised on the issue.

9.4 Class A Shareholders’ request for Special Meeting

Any request by Class A Shareholders to hold a Special Meeting:

- (a) must specify the issue to be voted on at the meeting;
- (b) will be signed by the persons making the relevant request;
- (c) will be deposited at the registered office of the Company; and
- (d) may consist of several documents in the like form each signed by one or more of the persons making the request.

9.5 Board may call other meetings with Shareholders

The Board may at any time:

- (a) call a meeting of Shareholders at which a Shareholder vote is not required to be held; or
- (b) organise for some or all of the Directors to meet on a more informal basis with a group of Shareholders,

at any locations and at any times determined by the Board, including in order to meet with Shareholders and provide them with updates on the affairs of the Company.

9.6 Proceedings at meetings

Notice for, and the proceedings of, meetings of Shareholders will be governed by Schedule 1.

Part 5 – How the Company will give notice to Shareholders

10. Notices

10.1 Company will give notice

The Company will give notice to the Shareholders:

- (a) when required to do so by the Act;
- (b) in respect of Shareholder meetings in accordance with Schedule 1; and
- (c) otherwise when the Board determines it is appropriate to do so.

10.2 Period of notice

Where a given number of days' notice extending over any period is required to be given, the day of service will not be included in the number of days or other period, but the day upon which the notice will expire will be included in the number of days or other period.

11. Service of notices and other documents on Shareholders

11.1 Notice to Class A Shareholders and any other natural persons

A notice, statement, report, accounts, or other document to be sent to a Shareholder who is a natural person may be:

- (a) sent electronically to the address provided to the Company by that person for the receipt of documents electronically, including sending by e-mail or by an application; or
- (b) displayed on the Company's website in the case of notices calling for nominees to stand for election as Directors and in any other cases where the Company believes that providing notice in this manner would be appropriate; or
- (c) posted to that person's address (being the address shown in the Share Register or such other address as may have been notified in writing to the Company by the Shareholder) or delivered to a box at a document exchange which that person is using at the time.

11.2 Notice to companies

A notice, statement, report, accounts, or other document to be sent to a Shareholder that is a company (not being an overseas company) may be sent or provided as follows:

- (a) by sending it electronically to the address provided to the Company by that company for the receipt of documents electronically, including sending by e-mail or by an application; or
- (b) in accordance with an agreement made with the company; or
- (c) by posting it to the company's registered office or address for service or delivering it to a box at a document exchange which the company is using at the time.

For the purposes of this clause, the address for service of a Shareholder that is a company will be the address shown on the Share Register.

11.3 Manner and proof of service

For the purposes of clauses 11.1 and 11.2, service may be provided in accordance with section 392 of the Act, and additionally:

- (a) a document sent electronically, including by email or by an application, is deemed to have been received on the working day it is sent or the next working day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication; and
- (b) in proving service of a document electronically it is sufficient to prove that the electronic communication was properly addressed and that a delivery-receipt message was received by the person who sent the electronic communication.

11.4 Notice to partnerships, trusts and any other entities

A notice, statement, report, accounts, or other document to be sent to a Shareholder that is a partnership, trust or any other type of entity not already expressly covered by this clause 11 may be sent to that entity in accordance with clause 11.2 with such modifications to clause 11.2 as the Board considers are appropriate to reflect the nature of that entity, and clause 11.3 will also apply to the manner and proof of service to such entities again with such modifications as the Board considers are appropriate to reflect the nature of that entity.

11.5 Notice where Shareholder has no registered address

If a Shareholder has no current registered address:

- (a) that Shareholder will not be entitled to have any notice from the Company;
- (b) all proceedings taken without notice to any such Shareholder will be as valid as if that Shareholder had due notice; and
- (c) a notice may (but need not) be given by the Company to any such Shareholder by displaying it on the Company's website and any notice so given will be deemed to have been duly given at noon on the day it was first displayed on the Company's website.

11.6 Notice to joint holders of a Class B Share

The Company will give notice to the joint holders of a Class B Share by giving the notice to the joint holder named first in the Share Register in respect of the Class B Share.

Part 6 – The Company’s rights and powers in respect of Shares

12. Acquisition by the Company of its own Shares

12.1 Acquisition by Company

The Company may purchase or otherwise acquire Shares issued by it in accordance with the Act.

12.2 Special offers by Company

For the purposes of section 60(1)(b)(ii) of the Act, the Company may make an offer to one or more Shareholders to acquire Shares issued by it without making such an offer to any other Shareholder or Shareholders in the Company.

12.3 Additional power to surrender Shares

The powers conferred by clauses 12.1 and 12.2 are in addition to the powers of the Company to surrender Shares pursuant to the Co-operative Companies Act and to this Constitution.

13. Company may hold and transfer its own Shares

13.1 Company may hold its own Shares

The Company may hold any of its own Shares acquired (under sections 59 or 110 of the Act), or surrendered (under section 20 or section 21 of the Co-operative Companies Act).

13.2 Transfer of own Shares

All the provisions of the Act, the Co-operative Companies Act and this Constitution applying to the issue of Shares by the Company will apply to the transfer of a Share in the Company held by the Company in itself.

14. Redemption of Shares

14.1 Redeemable Shares

The Company may issue Shares which are redeemable:

- (a) at the option of the Company; or
- (b) at the option of the holder of the redeemable Shares; or
- (c) on a specified date;

for a consideration that is:

- (d) specified; or
- (e) to be calculated by reference to a formula; or
- (f) required to be fixed by a suitably qualified and independent person as provided by section 68 of the Act.

14.2 Company’s option to redeem

The Company may exercise an option to redeem Shares in relation to one or more Shareholders in accordance with the Act.

15. Surrender of Shares

15.1 By agreement

Where a Shareholder has ceased to be a Transacting Shareholder, the Board may at any time resolve to accept an offer by that Shareholder to surrender all or any of that Shareholder's Shares having a nominal value.

15.2 At the option of Company

The Company may require any Shareholder to surrender to the Company all or any Shares having a nominal value held by that Shareholder if the Shareholder:

- (a) has ceased to be a Transacting Shareholder; or
- (b) is not a natural person and holds a Class A Share; or
- (c) has failed to comply in a material respect with the requirements relating to transactions with the Company (or any subsidiary of the Company) contained in any contract between the Company (or that subsidiary) and the Shareholder; or
- (d) has acted or attempted to act in a way that injures the property, or is contrary to the interests of the Company (or a subsidiary of the Company); or
- (e) holds more than one Class A Share or in its own capacity more than one Class B Share (as the case may be).

15.3 Standard consideration

The consideration of the surrender of Shares will be the nominal value of the Shares at the date the surrender takes effect or, if it is less than the nominal value of the Shares, the amount paid up on the Shares.

16. Other rights and powers

Additional rights and powers the Company or the Board (as applicable) has in respect of Shares are set out in Schedule 3.

Part 7 – Directors’ appointments, elections, powers and obligations, removals, and remuneration

17. Directors

17.1 Current Directors to continue in office

The Directors in office at the date on which this Constitution is adopted will be deemed to be appointed pursuant to this Constitution. Similarly, the Chair and Deputy Chair will continue in office and will be deemed to have been appointed as Chair and Deputy Chair respectively pursuant to this Constitution.

17.2 Number of Directors

The number of Directors will be as determined by the Board from time-to-time but there shall not be less than six nor more than nine persons appointed in accordance with this Constitution unless the Reserve Bank or any other regulatory body requires the Company to have a different minimum or maximum number of Directors in which case the minimum or maximum number (as the case may be) will be deemed to be the required number. Notwithstanding the above, if for whatever reason the number of Directors falls below six (or such other minimum number of Directors required by the Reserve Bank or any other regulatory body) then the remaining Directors will be taken to constitute a quorum and the Company may continue to operate under their direction in the usual manner until such time as any vacant Director position or positions can be filled.

17.3 Election of Directors will normally be by Ordinary Resolution

Subject to any approval requirement of the Reserve Bank or any other relevant regulatory body, a person may be elected as a Director by an Ordinary Resolution of the Shareholders entitled to vote on the appointment or removal of Directors, voting by electronic voting or any other method of voting that the Board may have approved for this purpose from time-to-time. Subject to this Constitution, the procedure for electing Directors by electronic voting or any other method of voting will be determined by the Board.

17.4 Shareholder’s right to nominate potential Directors

Shareholders may nominate potential directors at any time in accordance with any processes the Board sets from time-to-time.

17.5 Board consideration of Shareholder nominations

Where a Director vacancy occurs or is anticipated (whether as a result of an unexpected vacancy, a desire to expand the Board, or because a current Director is due to retire and stand for re-election under clause 17.15), then the Board at the commencement of its recruitment process will consider any Shareholder nominations that have been validly made in accordance with clause 17.4 and received by the Company:

- (a) in the 12 calendar months prior to that particular recruitment process formally commencing; and/or
- (b) on or before any date communicated by the Board for any nominations to be received by.

17.6 Board will assess and determine the suitability of potential directors

The Board will in accordance with any processes it may set from time-to-time:

- (a) assess and consider the suitability of any potential directors (including any persons nominated by Shareholders in accordance with clauses 17.4 and 17.5);
- (b) determine which (if any) of these will either be appointed by the Board in accordance with clause 17.8 or will stand for election or re-election by the Shareholders at the Annual Meeting; and
- (c) for each position vacant only put forward one person for election or re-election by the Shareholders, except where the circumstances are such that they believe it is appropriate to do otherwise.

17.7 Appointment will take effect at conclusion of Annual Meeting

Subject to any approval requirement of the Reserve Bank or any other relevant regulatory body, any appointment of a person as a Director following his or her election or re-election in accordance with clause 17.3 will take effect at the later of the conclusion of the Annual Meeting or following the announcement of the result of the vote for that candidate.

17.8 Directorship vacancies

Whenever a vacancy on the Board arises as a result of:

- (a) a Director ceasing to hold office by virtue of clause 17.16 (except clause 17.16(e)); or
- (b) subject to clause 17.2, the Board resolving that it is in the interests of the Company to appoint one or more additional Directors,

the Board may appoint a person as a Director and they will retire from the Board in accordance with clause 17.15(b).

17.9 Compliance with legal and regulatory requirements

Each Director and the Board will comply with any legal or regulatory requirements (including any conditions of the Company's registration as a registered bank) which are applicable to each of them from time-to-time, including any requirements relating to Directors' qualifications, independence and the Board's composition which may exist from time-to-time.

17.10 Chair of the Board and Deputy Chair

The Board will elect a Chair and Deputy Chair from their number. The Board will determine the period for which the Chair and the Deputy Chair are to hold office, and, unless otherwise determined, they will be elected annually. Any Chair and Deputy Chair may likewise be removed and another Director elected in his or her place.

17.11 Proceedings of Board

The proceedings of meetings of the Board will be governed by Schedule 2.

17.12 Voting by interested Director

A Director may not vote in respect of any matter in which he or she has a personal pecuniary interest not being an interest deriving from or relating to that Director's membership of the Company.

17.13 Stakeholder consideration

In discharging their duties under this Constitution, applicable company legislation, and the general law, the directors of the Company:

- (a) Subject to paragraph (b), will include in their consideration the following factors:
 - (i) the likely consequences of any decision or act of the Company in the long term;
 - (ii) the interests of the Company's employees;
 - (iii) the need to foster the Company's business relationships with suppliers, customers and others;
 - (iv) the impact of the Company's operations on the community and the environment;
 - (v) the desirability of the Company maintaining a reputation for high standards of business conduct;
 - (vi) the interests of the Shareholders of the Company; and
 - (vii) the ability of the Company to create an overall positive impact on society and the environment.
- (b) Need not give priority to a particular factor referred in paragraph (a) over any other factor (included in paragraph (a) or otherwise).

17.14 Period of office

Each Director holds office until his or her retirement, resignation, disqualification or removal in accordance with this Constitution and the Act.

17.15 Rotation of Directors

- (a) Subject to clause 17.15(c), at each Annual Meeting of the Company at least two Directors will retire from office.
- (b) The two Directors to retire at an Annual Meeting pursuant to clause 17.15(a) will be selected as follows:
 - (i) first, any Director appointed by the Board under clause 17.8 (if any) since the previous Annual Meeting will retire from the Board;
 - (ii) secondly, any Director or Directors who wishes or wish to retire from office and who does not want to offer himself or herself for re-election;
 - (iii) thirdly, any Director who has held office for a total of 9 years or more, unless the Board has resolved (in accordance with clause 17.17) that he or she does not need to retire at the Annual Meeting;
 - (iv) fourthly, any Director who has held office for four years or more since his or her election or re-election (as the case may be); and
 - (v) finally, the Director or Directors who has or have been the longest in office since his or her election or re-election (as the case may be),

but all such Directors (except any Director who wishes to retire and not offer himself or herself for re-election) will, subject to clauses 17.16 and 17.17, be eligible for re-election.

- (c) Notwithstanding clause 17.15(a), a Director is not required to retire pursuant to clause 17.15(a) more frequently than three years since his or her election or re-election (as the case may be). For the avoidance of doubt, in such circumstances the number of Directors required to retire will be reduced accordingly.
- (d) For the purposes of paragraph (a) above, the order of retirement as between Directors who have been in office for the same time will be determined by lot, unless otherwise resolved by the Board.
- (e) The retirement of a Director pursuant to this clause will take effect at the conclusion of the Annual Meeting.

17.16 Disqualification and removal

A Director will cease to hold office if the Director:

- (a) becomes disqualified from being a Director of a company pursuant to section 151 of the Act; or
- (b) becomes a protected person under the *Protection of Personal and Property Rights Act 1988*; or
- (c) resigns his or her office as a Director by notice in writing to the Board. The notice of resignation is effective when it is received by the Board or at a later time specified in the notice; or
- (d) retires from office pursuant to clause 17.1517.15 and is not re-elected; or
- (e) retires from office because he or she has ceased to be eligible for re-election pursuant to clause 17.17; or
- (f) is removed by an Ordinary Resolution of Shareholders, voted on at a Special Meeting called for that purpose, or for purposes including the removal of the Director; or
- (g) is removed from office by a resolution of the Board because that Director has ceased to meet any requirements for directors set by the Reserve Bank from time-to-time.

17.17 Long standing Directors

A person:

- (a) will not be eligible to be elected or re-elected as a Director if he or she has previously been a Director for a total of 9 years or more (whether consecutive or otherwise) unless the Board resolves otherwise; and
- (b) to whom this clause applies, will be taken to have retired from office at the conclusion of the next Annual Meeting, or at any earlier time if he or she resigns his or her office as a Director by notice in writing to the Board.

17.18 Remuneration of Directors

- (a) The Board may determine and authorise payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity if the Board is satisfied that to do so is fair to the Company.
- (b) The Board will not authorise the payment of remuneration or the provision of other benefits by the Company to the Directors collectively without the approval of

Shareholders by Ordinary Resolution, except where the remuneration is paid or the benefit is provided in respect of:

- (i) services provided to the Company by a Director, other than in his or her capacity as a Director; or
 - (ii) the execution of duties as a Director which are more than ordinarily onerous.
- (c) The Directors will be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as Directors.

Part 8 – The Electoral Oversight Panel and its role

18. The Electoral Oversight Panel

18.1 **Repeal of the Electoral Authority and establishment of the Electoral Oversight Panel**

Immediately following the adoption of this Constitution, the Electoral Authority will be taken to be repealed and an Electoral Oversight Panel will be taken to be established.

18.2 **Current Electoral Authority members to continue in office as Panel Members**

The members of the Electoral Authority in office at the date on which this Constitution is adopted will be deemed to be appointed as members of the Electoral Oversight Panel pursuant to this Constitution. Similarly, the Chair of the Electoral Authority will be deemed to be the Chair of the Electoral Oversight Panel and will be deemed to have been appointed as Chair pursuant to this Constitution.

18.3 **Role of the Electoral Oversight Panel**

The Electoral Oversight Panel will support Shareholders with their decision to vote on director elections or re-elections, by overseeing relevant Board processes, obtaining assurance on appropriate consideration of any shareholder nominees, and reporting to Shareholders on the integrity of these processes in accordance with the Charter.

18.4 **Compliance with Charter**

Immediately following adoption of this Constitution, the Board and the Electoral Oversight Panel will each be taken to have agreed:

- (a) to adopt, be bound by, and comply with, the Charter and their respective obligations and duties as set out in the Charter from time-to-time; and
- (b) that the Charter may only be amended by mutual written agreement between them.

18.5 **Board to provide assistance to the Electoral Oversight Panel**

The Board will provide any assistance to the Electoral Oversight Panel as is reasonably required by the Electoral Oversight Panel from time-to-time, including any specific assistance that the Board has agreed to provide as documented in the Charter.

18.6 **Remuneration of Panel Members**

- (a) The Board may determine and authorise payment of remuneration or the provision of other benefits by the Company to a Panel Member for services as a Panel Member or in any other capacity if the Board is satisfied that to do so is fair to the Company.
- (b) The Board will not authorise the payment of remuneration or the provision of other benefits by the Company to the Panel Members collectively without the approval of Shareholders by Ordinary Resolution, except where the remuneration is paid or the benefit is provided in respect of:
 - (i) services provided to the Company by a Panel Member, other than in his or her capacity as a Panel Member; or
 - (ii) the execution of duties as a Panel Member which are more than ordinarily onerous.

- (c) The Panel Members will be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at EOP or Board meetings or otherwise in the execution of their duties as Panel Members.

Part 9 – The indemnities and insurance policies that the Company provides to its Directors, employees, and Panel Members

19. Indemnity of Directors and employees

19.1 Types of proceedings that may be indemnified against

Subject to clause 19.3 and to the maximum extent permitted at law, the Board will cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
- (b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.

19.2 Limitation on indemnity under clause 19.1

Any indemnity provided under clause 19.1 will not indemnify any Director or employee against a liability in respect of which an indemnity is not permitted to be given at law, in which case the indemnity shall be read down to the extent permitted at law.

19.3 Types of liability that may be indemnified against

Subject to clause 19.4 and to the maximum extent permitted at law, the Board will cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under clause 19.1 above.

19.4 Limitations on indemnity under clause 19.3

Any indemnity provided under clause 19.3 will not indemnify any Director or employee against:

- (a) criminal liability; or
- (b) liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act (duty to act in good faith and in the best interests of the company); or
- (c) in the case of any employee, liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (d) a liability in respect of which an indemnity is not permitted to be given at law, in which case the indemnity shall be read down to the extent permitted at law.

20. Insurance and indemnification of Directors, employees, and Panel Members

20.1 Board may effect insurance

The Board may, subject to section 162 of the Act and any express prohibitions at law preventing it from doing so, cause the Company to effect insurance for Directors and for any employees of the Company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

20.2 The Company may indemnify and insure Panel Members

The Company may give such indemnities and effect such insurances in respect of the Electoral Oversight Panel and the Panel Members as the Board thinks fit to the fullest extent permitted by law.

20.3 Directors to sign certificate

The Directors who vote in favour of authorising the effecting of insurance under clauses 20.1 or 20.2 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

20.4 Entry in the Interests Register

The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are promptly entered in the Interests Register.

20.5 Definitions

For the purpose of these clauses 19 and 20, "Director" includes a former Director and "employee" includes a former employee, and Panel Member includes any former Panel Member.

Part 10 – What happens if the Company is dissolved, wound-up or liquidated

21. Right to participate

Upon the dissolution, winding-up or liquidation of the Company, only the holders of Class A Shares (and not the holders of any other Class of Shares, including any ordinary Shares which may be issued in the future) will have the right to participate in the distribution of any surplus assets of the Company after payment of all of its creditors.

22. Extent of participation

22.1 Determination of the extent of participation where there is a dissolution or wind-up

If a dissolution or wind-up of the Company has been resolved by Shareholders, where permitted at law the Board will, in its sole discretion, determine the extent to which a Class A Shareholder is entitled to participate in the distribution of any surplus assets whether:

- (a) equally; or
- (b) on the basis of a formula which has regard to the frequency, volume, size, type and benefit to the Company of transactions between the Company and each Class A Shareholder during a period selected by the Board.

22.2 Determination of the extent of participation where the Company is in liquidation

Where the Company is in liquidation, the liquidator in his or her sole discretion will determine the extent to which a Class A Shareholder is entitled to participate in the distribution of surplus assets, whether:

- (a) equally; or
- (b) on the basis of a formula which has regard to the frequency, volume, size, type and benefit to the Company of transactions between the Company and each Class A Shareholder during a period selected by the liquidator.

22.3 Determinations will be binding

A determination regarding the extent to which a Class A Shareholder is entitled to participate in the distribution of surplus assets made either by the Board under clause 22.1 or by the liquidator under clause 22.2 will be binding on all Shareholders.

Schedule 1 – Proceedings at Shareholders' meetings

1. Interpretation

Unless stated otherwise, a reference in this Schedule 1 to a Shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a Shareholder, a representative of a Class B Shareholder, an attorney of a Shareholder, and any person who may lawfully act on behalf of a Shareholder.

2. Notice

2.1 Written notice must be given to Shareholders, Directors and auditors

Written notice of the time and place of a meeting of Shareholders must be sent (electronically or otherwise) to every Shareholder entitled to receive notice of the meeting and to every Director and any auditor of the Company not less than 10 working days before the meeting.

2.2 Notice of Annual Meeting

The notice of Annual Meeting may include instructions for casting postal votes by electronic means, carrying a clear instruction that voting must be completed by the time nominated each year by the Board for this purpose, which shall not be earlier than one week prior to the proposed date of the Annual Meeting.

2.3 Notice must state nature of business

The notice must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any Special Resolution to be submitted to the meeting.

2.4 Irregularities in notice may be waived

An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.

2.5 Company's accidental failure to send notice does not invalidate meeting

The accidental omission to give notice of a meeting to, or the failure to receive notice by, any person entitled to that notice does not invalidate the proceedings at that meeting.

2.6 Notice of adjournment

If a meeting of Shareholders is adjourned for:

- (a) less than 20 working days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned; or
- (b) 20 working days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

2.7 Changes to notice

If after a notice is sent out any individual who has put himself or herself forward to hold an office with the Company withdraws his or her consent to be appointed to that office:

- (a) any part of a resolution provided to Shareholders in respect of the proposed appointment of that person will be disregarded and will, and will be deemed to be, amended as if that part of the resolution did not exist, and the remainder of the notice be of full effect and validity;
- (b) the Chair will not put any part of a resolution relating to that person to the Shareholders' meeting and does not need to announce the result of any voting on that part of the resolution which may have already occurred before consent was withdrawn; and
- (c) any business of the Shareholders' meeting and all resolutions (or parts thereof) which do not relate specifically to that person will be unaffected by the withdrawal and will be of full effect and validity.

3. Meeting and quorum

3.1 Methods of holding meetings

A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if the Board so decides, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting.

The Company is not required to hold meetings of Shareholders in the manner specified in clause 3.1(b) above. Meetings will be held in that manner only if the notice so specifies or the Board otherwise decides that the Company should do so.

3.2 Business to be transacted only if a quorum is present

Subject to clause 3.3 below, no business may be transacted at any general meeting if a quorum is not present.

3.3 Quorum for Shareholder's meeting

A quorum for a meeting of Shareholders is present if not less than 100 Transacting Shareholders or their proxies are present or have cast postal votes on the business to be transacted by the meeting.

3.4 Meeting convened at Shareholders' request dissolved if no quorum

In the case of a meeting convened under section 121(b) of the Act, if a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

3.5 Other meetings to be adjourned if no quorum

In the case of any meeting other than a meeting convened under section 121(b) of the Act, if a quorum is not present within 30 minutes after the time appointed for the meeting the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Board may appoint. If, at the adjourned meeting, a quorum is not present within 30 minutes of the time appointed for

the meeting either by the Board or in accordance with clause 3.4, the Shareholders or their proxies present are a quorum.

4. Chair

4.1 Chair will chair the meeting

The Chair of the Board, if one has been elected by the Directors and is present at a meeting of Shareholders, will be the Chair.

4.2 Transacting Shareholders may elect another Director to act as the Chair if the Chair and the Deputy Chair are not present or willing to act

If no Chair of the Board has been elected or, if at any meeting of Shareholders the Chair of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, or is unwilling to act, the Deputy Chair of the Board (if any) will act as the Chair, or failing him or her, the Transacting Shareholders present will choose another Director to act as the Chair.

4.3 As a last resort Transacting Shareholders may elect a Transacting Shareholder to act as the Chair

If at any meeting of Shareholders, no Director is present within 15 minutes of the time appointed for the commencement of the meeting, or is willing to act as the Chair, the Transacting Shareholders present may elect one of them to act as the Chair.

4.4 Chair's power to adjourn meeting

The Chair at which a quorum is present:

- (a) may adjourn the meeting with the consent of the Shareholders present who are entitled to attend and vote at that meeting; and
- (b) must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

5. Voting

5.1 Voting by show of hands or voice vote at a meeting

In the case of a meeting of Shareholders held under clause 3.1(a), unless a poll is demanded, voting at the meeting will be by whichever of the following methods is determined by the Chair:

- (a) voting by voice; or
- (b) voting by show of hands.

5.2 Voting by voice if audio-conference meeting

In the case of a meeting of Shareholders held under clause 3.1(b), unless a poll is demanded, voting at the meeting will be by the Shareholders entitled to vote signifying individually their assent or dissent by voice or by such other manner as the Chair may decide.

5.3 Votes by joint holders

Where two or more persons are registered as the holders of a Class B Share (or any other Share that can be jointly held), the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of other joint holders.

5.4 Shareholder loses certain voting rights if calls unpaid

If an amount due to the Company in respect of any Share has not been paid then that Share may be voted at a meeting of an Interest Group but not at any other meeting of Shareholders.

5.5 Chair allowed casting vote

The Chair is entitled to a casting vote.

5.6 Chair's declaration of result

Unless a poll is demanded, a declaration by the Chair that a resolution on a show of hands or voice vote or by such other manner as the Chair may have decided under clause 5.2 is carried by the requisite majority or lost, is conclusive evidence of that fact.

5.7 Electronic voting generally

The Board may permit, in relation to a particular meeting or generally:

- (a) the appointment of proxies or representatives to be made by electronic means;
- (b) postal votes to be cast by electronic means; and
- (c) to the extent permitted by law, votes cast on resolutions at meetings of Shareholders (or other groups) by electronic means.

The procedures in relation to such electronic appointment or electronic voting will be those required by law (if any) together with any other procedures determined by the Board. If the Board permits electronic appointment in accordance with this clause, any such electronic appointments may be made or electronic votes cast regardless of any other provision of this Constitution.

5.8 Board may determine who are Transacting Shareholders

Subject to the provisions of the Co-operative Companies Act, the Board may decide whether any person is at any time a Transacting Shareholder of the Company.

6. Proxies

6.1 Proxies permitted

A Shareholder who is entitled to vote on a resolution may exercise their right to vote either by being present in person or represented by proxy.

6.2 Proxy to be treated as Shareholder

A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

6.3 Appointment of proxy must be in writing and specify restrictions

A proxy must be appointed by a notice in writing signed by the Shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding any time limit set by the Board from time-to-time.

6.4 Notice of proxy to be produced at least 48 hours before meeting

No proxy is effective in relation to a meeting unless it and the power of attorney (if any) under which it is signed, or a certified copy, is received by the Company:

- (a) at least 48 hours before the start of a meeting or, in the case of a meeting adjourned under clause 4.4, at least 48 hours before the resumption of the meeting following the adjournment; or

- (b) before the start of a meeting or the resumption of an adjourned meeting where the Chair decides in his or her absolute discretion to waive the requirement outlined in clause 6.4(a) for documents to be received by the Company 48 hours before the start of a meeting.

6.5 Form of notice of proxy

- (a) The notice appointing a proxy will be in any form approved by the Board from time-to-time.
- (b) The Company will not issue any proxy form with a proxy named in the form either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a proxy if Shareholders desire to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company. An instrument of proxy in favour of the Chair (howsoever expressed) will be valid and effectual as though it were in favour of a named person and will constitute the person who chairs the meeting or meetings for which the proxy is used (whether an adjournment or not) the lawful proxy or proxies of the appointor.

6.6 Vote by proxy valid where Company not notified before meeting of disqualified proxy

A vote given in accordance with the terms of a notice of appointment of proxy will be valid regardless of the previous:

- (a) death or incapacitation of the appointor; or
- (b) revocation of the proxy or revocation of the authority under which the proxy was executed; or
- (c) transfer of any Share in respect of which the proxy is given,

if the Company did not receive written notice of that death, incapacitation, revocation or transfer 24 hours before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

6.7 Revocation of notice appointing proxy by notice to Company

Any notice appointing a proxy given by a Shareholder will be deemed to be revoked on receipt from the Shareholder of a notice in writing to that effect at the registered office of the Company not less than 24 hours before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

7. Postal votes

7.1 Board may allow postal votes by electronic means

The Board may decide in respect of a particular meeting or a particular resolution or resolutions at a meeting that the Shareholders entitled to vote may exercise their right to vote at a meeting by casting a postal vote by electronic means in accordance with clause 7, schedule 1 of the Act.

7.2 Chair must call for a poll in certain circumstances

The Chair must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.

7.3 Chair to ensure certificate of postal votes is annexed to minutes

The Chair must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

8. Polls

8.1 Poll may be demanded by the Chair or by Shareholders

At a meeting of Shareholders a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

- (a) the Chair, at his or her absolute discretion; or
- (b) not less than five Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders having the right to exercise at least 10 percent of the total votes entitled to be exercised on the business to be transacted at the meeting; or
- (d) by a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the Shares that confer that right.

For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of Shareholders grants authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

8.2 Demand for poll may be withdrawn

The demand for a poll may be withdrawn by the person or persons who demanded the poll.

8.3 Time at which polls to be taken

A poll demanded:

- (a) on the election of a chair of a meeting or on a question of adjournment must be taken immediately; and
- (b) on any other question is to be taken at such time as the Chair directs.

8.4 Demand for poll will not prevent other business being dealt with

The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

8.5 Result of a poll to be treated as resolution of the meeting

The result of a poll declared by the Chair will be deemed to be the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

8.6 Counting votes cast in a poll

If a poll is taken:

- (a) votes must be counted according to the votes attached to the Shares of each Shareholder present and voting; and
- (b) any abstentions will not be taken into account when determining the number of votes cast on a resolution.

8.7 Scrutineer

The Chair may nominate any person or group of persons (including employees and agents of the Company) to act as scrutineer for the purposes of a poll.

9. Minutes

9.1 Board to ensure minutes are kept

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

9.2 Minutes will be evidence of proceedings

Minutes which have been approved by the Board are prima facie evidence of the proceedings.

10. Shareholder proposals

10.1 Shareholder proposals by written notice

A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

10.2 Board to give notice of proposal at Company's expense

If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.3 Board to give notice of proposal at Shareholder's expense

If the notice is received by the Board not less than one week and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.4 Board may give notice of proposal on short notice

If the notice is received by the Board less than one week before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

10.5 Proposing Shareholder may include statement

If the Board intends that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

10.6 Board may exclude statement in some circumstances

The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory (within the meaning of the *Defamation Act 1992*), frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory (within the meaning of the *Defamation Act 1992*).

10.7 Shareholder to give security for costs for proposal with short notice

Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company an amount sufficient to meet those costs.

11. Corporations may act by representatives

A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy and the provisions of clauses 6.1 to 6.7 (inclusive) will apply to such appointment as if references to proxy were references to representative. The representative will be entitled to attend and be heard at a meeting of Shareholders as if the representative were the Shareholder.

12. Shareholders' meetings will normally be private

12.1 Directors will have right to attend and speak at meetings

Every Director will have the right to attend and speak at every meeting of Shareholders.

12.2 Shareholders' meetings will normally be private

The meetings of the Company will be regarded as private meetings. Subject to clauses 11 and 13 and unless otherwise resolved by an Ordinary Resolution of Shareholders present in person or by proxy at the meeting, no persons other than Shareholders, persons holding valid proxies for Shareholders, Directors, any person whose attendance the Board has resolved is desirable, and representatives of the duly appointed auditors, solicitors and trustees of the Company will be entitled to attend any meeting of Shareholders.

13. Voting by Administrator etc

If any person otherwise entitled by this Constitution to a vote is a mentally disordered person within the meaning of the *Mental Health (Compulsory Assessment & Treatment) Act 1992*, or a person subject to a property order under the *Protection of Personal and Property Rights Act 1988* he or she may vote by his or her guardian or committee or manager or administrator or attorney under an enduring power of attorney, as the case may be.

14. Other proceedings

Except as provided in this Schedule, and subject to the Constitution, a meeting of Shareholders may regulate its own procedure.

Schedule 2 – Proceedings at Board meetings

1. Chair

The Chair will preside at each meeting of the Board as the Chair, and in the case of his or her absence or incapacity to act at any meeting:

- (a) the Deputy Chair of the Board, if he or she is present, will act as the Chair; or
- (b) if the Deputy Chair of the Board is also absent or incapacitated, the Directors present will select one of their number to act as the Chair.

2. Convening meetings

- (a) A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with this clause, including for the avoidance of doubt by electronic means.
- (b) Not less than two working days' notice of a meeting of the Board must be sent to every Director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed. If a Director who is for the time being absent from New Zealand provides the Company with an email address or an alternative way of contacting him or her 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. Where the Chair believes it is necessary to convene a meeting of the Board as a matter of urgency, shorter notice of the meeting of the Board may be given, so long as at least one hour notice is given.
- (c) An irregularity in the notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all Directors entitled to receive notice of the meeting agree to the waiver.
- (d) The notice of meeting given pursuant to clause (b) above must be sent to the email address or alternative contact point which the Director provides to the Company for that purpose, but if an email address or alternative contact point is not provided, then either to the last email address or alternative contact point for that Director that is known to the Company.

3. Methods of holding meetings

A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audiovisual, communication by which all Directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

4. Quorum

- (a) A quorum for a meeting of the Board will be at least a majority of Directors who for the avoidance of doubt may be present in person and/or via means of audio, or audiovisual, communication (such as zoom or skype) in accordance with clause 3.
- (b) No business may be transacted at a meeting of the Board if a quorum is not present.

5. Voting

- (a) Every Director has one vote.
- (b) In the case of an equality of votes, the Chair will have a second or casting vote.
- (c) 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 the resolution.

6. Minutes

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

7. Written resolutions

- (a) A resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held;
- (b) A resolution in writing may consist of several documents (including email or other similar means of communication) in like form each signed or assented to by one or more Directors; and
- (c) A copy of any such resolution in writing must be entered in the minute book of Board proceedings.

8. Other proceedings

Except as set out in this Constitution, the Board may regulate its own procedure.

Schedule 3 – Other rights and powers the Company has in respect of Shares

1. Transfer of Shares

1.1 Form of transfer

The Board may from time-to-time prescribe the form of transfer of Shares in respect of any transferable Shares which the Board may issue.

1.2 Execution of form of transfer

The form of transfer will be executed by or on behalf of the transferor and the transferee.

1.3 Delivery of form of transfer

The form of transfer must be delivered to the registered office of the Company.

1.4 Delay or refusal to register transfers

The Board may delay or refuse to register a transfer:

- (a) where the Company has a lien on any Share included in the transfer; or
- (b) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
- (c) where the form of transfer and any other documentation required has not been provided or has not been duly executed; or
- (d) where the Board is of the opinion that the proposed transferee is not a desirable person to become a Shareholder of the Company; or
- (e) the Board considers that it is not in the best interests of the Company to register the transfer; or
- (f) the Board considers that to effect the transfer would result in a breach of the law; or
- (g) where the transfer is in respect of more than one Class of Shares,

and may refuse to register a transfer of a Class of Shares to someone who does not already hold a share in the same Class.

1.5 Board resolutions refusing or delaying Share transfers

A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five working days of the date of the resolution being passed.

1.6 Register prima facie evidence

Subject to section 91 of the Act, the entry of the name of a person in the Share Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.

1.7 Closure of Share Register

The Share Register may be closed during such times as the Board thinks fit not exceeding in aggregate 30 working days in each year.

2. Registered Shareholders

2.1 Trust not to be registered

No notice of a trust, whether express, implied, or constructive, may be entered on the Register.

2.2 Trust not to be recognised

Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.

2.3 Receipts from joint holders

Any one of the persons registered as joint holders of a Share may give a receipt in respect of that Share.

Schedule 4 – Defined meanings and interpretation principles

1. Defined meanings

In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

Act means the *Companies Act 1993*;

Annual Meeting means a meeting of Shareholders held pursuant to clause 9;

Annual Report means the report prepared in accordance with section 208 of the Act.

Board means the Directors who number not less than the required quorum acting together as the board of Directors of the Company;

CCLA means the *Contract and Commercial Law Act 2017*;

Chair means the chair of the Board elected under clause 17.10;

Charter means the Electoral Oversight Panel Charter in the form approved by the Board on 4 April 2024, as amended from time-to-time;

Class and **Class of Shares** means a class of Shares having attached to them identical rights, privileges, limitations, and conditions;

Class A Shares means a Share with the features outlined in clause 5.2;

Class B Shares means a Share with the features outlined in clause 6.2;

Company means The Co-operative Bank Limited;

Constitution means this constitution of the Company and all amendments to it from time-to-time;

Co-operative Companies Act means the *Co-operative Companies Act 1996*;

Core Foundations means the core foundations document as approved by the Board dated 16 February 2023, which sets out the Company's purpose and values, and references to it in this Constitution will, to the extent appropriate, include any amendment or replacement document or any document that supersedes it from time-to-time;

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company;

Distribution, in relation to Shares held by a Shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or
- (b) the incurring of a debt by the Company to or for the benefit of the Shareholder,
- (c) whether by means of a purchase of property, the redemption or other acquisition of Shares, a distribution of indebtedness, or by some other means;

Electoral Oversight Panel means the body comprised of the Panel Members appointed by the Board to perform the Electoral Oversight Panel's role and obligations as set out in clause 18 from time-to-time;

Interest Group, in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes of Shares.

For the purposes of this definition:

- (d) one or more Interest Groups may exist in relation to any action or proposal; and
- (e) if:
 - (i) action is taken in relation to some holders of Shares in a Class and not others; or
 - (ii) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class,

holders of Shares in the same Class may fall into two or more Interest Groups;

Interest Group Resolution means a resolution that is put by the Company to a Class of Shareholders on the basis that they constitute an Interest Group in respect of the action or proposal being resolved;

Interests Register means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

Ordinary Resolution means, except where otherwise provided in this Constitution, a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

Panel Member means a member for the time being of the Electoral Oversight Panel;

Reserve Bank means the Reserve Bank of New Zealand;

Share means a share in the Company;

Shareholder means a person:

- (a) registered in the Share Register as the holder of one or more Shares; or
- (b) until the person's name is entered in the Share Register, a person who is entitled to have that person's name entered in the Share Register under a registered amalgamation proposal as a Shareholder in an amalgamated company;

Share Register means the register of Shares required by section 87 of the Act to be kept;

Solvency Test is the test set out in section 4 of the Act, as supplemented by section 52 (which relates to how the test applies to Distributions);

Special Meeting means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board;

Special Resolution means a resolution of Shareholders approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question;

Transacting Product means a bank account or other product acquired by a person from the Company, the status of which is considered by the Company to be active or current

having taken account of any dormancy criteria that the Company may have set from time-to-time;

Transacting Shareholder means a transacting shareholder as defined by the Co-operative Companies Act, including the holders of any Class A Shares and Class B Shares who hold a Transacting Product;

week means a calendar week; and

working day has the meaning given to it in section 2(1) of the Act.

2. Interpretation principles

2.1 Interpretation

In this Constitution unless the context otherwise requires:

- (a) headings have been included for convenience only and will not affect the interpretation of clauses in this Constitution;
- (b) the singular includes the plural and *vice versa*;
- (c) one gender includes the other genders;
- (d) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
- (e) a reference to a natural person is to an individual only;
- (f) a reference to **sending** or **giving**, in relation to a document, information, or any other matter, includes sending or giving by electronic or other means;
- (g) **written** and **in writing** includes any means of reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
- (h) **signature** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document;
- (i) a reference to a clause is to that clause in this Constitution, or where used in a schedule, is to the relevant clause of that schedule, unless stated otherwise, or where the meaning does not permit;
- (j) references to any legislation includes that legislation as amended, and any replacement of that legislation, from time-to-time; and
- (k) **includes**, **include** and **including** will be construed without limitation.

2.2 Other definitions have meaning set out in the Act

Subject to clause 1 of Schedule 4, expressions contained in this Constitution bear the same meaning as specified in the Act or the Co-operative Companies Act, as applicable, each as amended from time-to-time.

2.3 Constitution subject to changes in the Act

If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause will be deemed to be amended in the same manner as the change in the Act so that this Constitution does not contravene or become inconsistent with the Act.

2.4 Use of electronic means

Where a legal requirement under the Act, the Co-operative Companies Act or any other enactment is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the CCLA in the same manner as is required by the CCLA to meet that legal requirement under the enactment. In this clause, the term “legal requirement” has the meaning given to it by the CCLA.

2.5 Receipt of electronic communications

For the purposes of section 214 of the CCLA, a document under this Constitution which is sent in electronic form and by way of an electronic communication is taken to be received:

- (a) if sent by the Company, on the working day it is sent or the next working day if sent outside normal business hours, if the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication; or
- (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.