
**CONSTITUTION OF
DAIRY COMPANIES ASSOCIATION OF NEW ZEALAND
INCORPORATED**

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CONSTITUTION OF DAIRY COMPANIES ASSOCIATION OF NEW ZEALAND INCORPORATED

1. NAME

- 1.1 **Name:** The name of the Association is Dairy Companies Association of New Zealand Incorporated.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions:** In this Constitution, unless the context otherwise requires:

“**Act**” means the Incorporated Societies Act 2022;

“**Annual General Meeting**” means the annual general meeting of Members held in accordance with clause 12.1;

“**Application Form**” means the application form for membership, as determined by the Executive Committee from time to time.

“**Association**” means Dairy Companies Association of New Zealand Incorporated;

“**Commercially Sensitive Information**” means any Confidential Information that is also commercially sensitive;

“**Confidential Information**” means:

- (a) all information, in any form whether oral, written or electronic, related to the Association or the Association’s affairs of a confidential or proprietary nature; and
- (b) any report, note, conclusion, summary, record or other material based on, or derived or produced partly or wholly from, or incorporating any of, the information referred to in the paragraph above.

However, does not include any information, which is or becomes public knowledge, except due to a breach of the obligations of confidentiality under clause 22;

“**Constitution**” means this constitution, including any amendments;

“**Contact Person**” means the person appointed by the Executive Committee as the contact person for the Association in accordance with clause 24.

“**Dairy Material**” has the meaning given to it in section 4(1) of the Animal Products Act 1999;

“**Executive Committee**” means the executive committee constituted under clause 8 of this Constitution;

“**Executive Committee Member**” means a member of the Executive Committee duly appointed under clause 8.3 of this Constitution;

“**IDF**” means International Dairy Federation or its successor in title;

“**Meeting**” means an Annual General Meeting or a Special General Meeting;

“Member” means each person who is a member of the Association pursuant to clause 5 of this Constitution;

“Registered Exporter” means an entity duly registered as an exporter for the purposes of part 5 of the Animal Products Act 1999

“Register” has the meaning given in clause 5.5;

“Registered Risk Management Programme” has the meaning given to it in section 4(1) of the Animal Products Act 1999;

“Registrar” means the Registrar of Incorporated Societies under the Act.

“Secretariat” means the secretariat described in clause 11 of this Constitution; and

“Special General Meeting” means a special general meeting of Members held in accordance with clause 12.3.

2.2 **Interpretation:** In the Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and are not to affect the construction of the Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses are to clauses of this Constitution;
- (c) a reference to any statute, statutory regulation or other statutory instrument include the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;
- (d) the singular includes the plural and *vice versa* and one gender includes the other genders;
- (e) the words “written” and “writing” include facsimile and electronic communications and any other means of communication resulting in permanent visible reproduction;
- (f) the word “person” includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (g) the words “day” and “days” mean calendar days;
- (h) references to a specified percentage of “milk solids processed by all Members” or any similar phrase shall be calculated by reference to a period specified by the Executive Committee from time to time or for any specific purpose of purposes; and
- (i) words or expressions defined in the Act have the same meaning where they are used in the Constitution.

2.3 **Determination by Executive Committee:** If any question arises as to the construction or application of any of the Constitution or of any by-laws or regulations made under the Constitution, the Executive Committee is hereby empowered to determine the same.

3. OBJECTS OF ASSOCIATION

3.1 **Principal objective:** The principal objective of the Association is (on a not-for-profit basis) to work in the best interests of the New Zealand dairy industry as a whole, but in particular to represent the collective position of New Zealand dairy manufacturing and/or exporting companies on industry-wide policy issues, both within New Zealand and internationally.

3.2 **Objectives:** To achieve the principal objective in clause 3.1, the objects of the Association include to:

- (a) act as a forum for discussing, formulating and co-ordinating industry-wide policy positions;
- (b) represent industry-wide views on trade policy issues. This extends to domestic policy issues that have an impact on trade, including:
 - (i) domestic regulation of the dairy industry; and
 - (ii) general public policy questions including, without limitation, environmental, animal welfare, biosecurity, food safety, bio-science, energy and transportation policy;
- (c) maintain an overview of the constituent parts of the New Zealand dairy industry, and facilitate co-operation between other organisations in the New Zealand dairy industry in areas of common policy interest;
- (d) establish and maintain an effective consultative relationship with the New Zealand Government;
- (e) present the dairy industry's position on policy questions internationally;
- (f) liaise with similar dairy industry organisations overseas;
- (g) represent and promote New Zealand dairy manufacturers' and exporters' interests in IDF policy and decision-making through membership of New Zealand's National Committee of the IDF and as New Zealand's representative in other IDF committees, as appropriate; and
- (h) generally to do all such other things as may be incidental or conducive to the attainment of the above objects or any of them.

The objects specified in the above paragraphs shall not be limited or restricted by reference or inference from the terms of any other paragraph, and shall be carried out in compliance with all relevant laws including under the Commerce Act 1986.

4. POWERS OF THE ASSOCIATION

4.1 The Association has all of the rights, powers and privileges of a natural person, including all of the powers necessary for, ancillary or incidental to fulfilling its objects including, without limitation:

- (a) the power to borrow money; and

- (b) the power to indemnify and insure Executive Committee Members in accordance with clause 21.

5. MEMBERSHIP

- 5.1 **Qualification – manufacturers and exporters:** The following persons who make proper application under clause 5.3, and who consent to be a Member and agree to abide by the Constitution (including payment of any membership fees), may apply for membership of the Association:
 - (a) a Registered Exporter of Dairy Material, that is also a holder of a Registered Risk Management Programme for defined heat treatment of milk; or
 - (b) the holding company, within the meaning of the Companies Act 1993, of any company or companies that qualify under paragraph (a) above.
- 5.2 **Qualification – other categories:** If the Executive Committee agrees, membership may be extended to any person or class of persons, and on such terms as the Executive Committee considers appropriate, having regard to the objects of the Association.
- 5.3 **Application for membership:** Every application for membership shall be made in writing to the Association in the form of the Application Form.
- 5.4 **Approval of membership:** The Executive Committee shall approve any application for membership submitted to it by a 75% majority of members, and shall not be required to give reasons for not approving any application.
- 5.5 **Registration of membership:** On acceptance by the Executive Committee of an application for membership, the applicant will be registered as a Member. The Association shall maintain a register, containing for each Member the Member's name, business address, email address, telephone number, date of joining, date of ceasing to be a Member, and any other such particulars as may from time to time be determined necessary by the Executive Committee (the "Register"). The Register shall be open for inspection during normal office hours by any Member.
- 5.6 **Classes of membership:** The Executive Committee may elect to create different categories of membership, and may, subject to the Constitution, decide upon the rights, privileges and obligations that shall apply to each category of Members.
- 5.7 **Copy of Constitution:** Every paid-up Member shall be provided on request with a copy of the Constitution without charge.
- 5.8 **Rights and Obligations of Members:** All Members shall be subject to the Constitution. Rights and benefits of membership shall only be available to Members whose membership fees are fully paid.
- 5.9 **Not assignable:** The rights, privileges and obligations of a Member are not assignable except in accordance with the Constitution.

6. MEMBERSHIP FEES

- 6.1 **Membership Fees:** The annual membership fees payable by Members shall be fixed by the Executive Committee prior to the end of the financial year preceding the financial year for which the membership fees are fixed.

6.2 **Notification and Payment:** The Secretariat shall send invoices to Members for membership fees as soon as practicable after the beginning of each financial year and members shall pay the fees within two months of receipt of invoice.

6.3 **Special funding:** The Executive Committee may (in addition to prescribing the rate of the membership fee) impose a special charge or fee on Members to assist the Association in the better carrying out of its objects. Such special charge or fee may be recurring or non-recurring, and may be for a particular or general purpose. Members shall pay any special charge or fee no later than two months after receipt of an invoice from the Executive Committee.

7. CESSATION OF MEMBERSHIP

7.1 **Resignation:** A Member shall cease to be a Member of the Association 7 days after receipt by the Association of a written resignation from that Member.

7.2 **Failure to Pay Subscriptions:** The Executive Committee shall have power to remove from the Register any Member whose fees are three months or more in arrears. Such power shall be exercised only after a resolution to that effect has been passed by the Executive Committee at a duly constituted meeting. A Member so removed may be reinstated upon payment of the current year's and any other outstanding fees, together with any other arrears.

7.3 **Misconduct:**

(a) **Suspension:** Any Member who does not abide by the Constitution or whose actions are considered by the Executive Committee to be prejudicial to the objects of the Association may be suspended by unanimous resolution of the Executive Committee (unless the Member concerned has a representative on the Executive Committee, in which case suspension shall require an affirmative vote from all other members of the Executive Committee). Fourteen days' notice of the proposal to consider a suspension resolution shall be given to all Executive Committee Members and to the Member affected. Any Member whose suspension is proposed shall have the right to appear before the Executive Committee and to be heard prior to the resolution being put.

(b) **Expulsion:** The suspension imposed under paragraph 7.3(a) shall be confirmed within 60 days by a resolution passed by a three quarters majority of Members present and entitled to vote at a Meeting (or on a written resolution). A representative from the suspended member shall have the right to be heard at the Meeting (or to submit a written statement should the resolution be proposed to be passed in writing in lieu of a meeting), but shall not be entitled to vote on the suspension. Confirmation of the suspension at the Meeting (or by written resolution) shall result in expulsion. An expelled Member shall be informed in writing of the decision of the Meeting (or the resolution), and may re-apply to the Executive Committee for membership after two years from the date of expulsion. If the resolution is not passed by the required majority, then the suspension shall end on the date falling 60 days after the beginning of the suspension under paragraph 7.3(a).

7.4 **Recovery of Fees: The cessation of a Member's membership for any reason whatsoever shall not:**

(a) affect that Member's obligation to pay; or

(b) prejudice the right of the Executive Committee to recover,

any membership fees or other dues in arrears and unpaid at the time of cessation of membership.

Additionally, the cessation of a Member's membership, for any reason whatsoever, shall not entitle the Member to any reimbursement or any credit for any fees paid prior to cessation regardless of whether such fees relate to a period that ends after the date of such cessation.

7.5 **Return of documents and confidentiality:** Any Member who has resigned or has been removed pursuant to the Constitution shall return to the Association any property, documents, papers, pamphlets or other material which may have been acquired by that Member as a privilege of membership of the Association. The confidentiality obligation in clause 22 shall continue to apply to such Member.

8. EXECUTIVE COMMITTEE

8.1 **Management of the Association:** The business and affairs of the Association shall be governed by the Executive Committee.

8.2 **Number of members:** Subject to clause 8.8, the Executive Committee shall comprise no less than 3 members.

8.3 **Appointment of Executive Committee Members:** The Executive Committee shall comprise one representative nominated by each Member who qualifies under clause 5.1, providing that:

(a) no Member shall be obliged to appoint a representative pursuant to this clause; and

(b) if any Member, having appointed a representative pursuant to this clause, ceases to be a Member for any reason, that representative appointed by such Member shall be deemed to have been removed by such Member pursuant to clause 8.6.

8.4 **Limitation:** No person may be appointed to the Executive Committee if they are precluded by any relevant legislation from holding the office of Executive Committee Member.

8.5 **Term of Office:** Executive Committee Members shall be appointed for terms of 24 months (or such other period as determined by the Member that appointed them), subject to clause 8.6, and shall be eligible for reappointment at the end of such term in accordance with clause 8.3.

8.6 **Removal from office:** An Executive Committee Member appointed pursuant to clause 8.3 may be removed or replaced, for any reason, during their term by the Member that appointed them.

8.7 **Appointment of independent Chairperson:**

(a) The Executive Committee may appoint from time to time an independent chair by a 75% majority vote in favour of the recommended independent candidate. Otherwise the chair will be appointed from within the Members by a 75% majority

vote in favour of the recommended Member candidate, with all Members being entitled to vote. The chair will not have a casting vote on any resolution.

- (b) Subject to clause 8.7(d), the chair will be appointed for a term up to 36 months, and shall be eligible for re-appointment at the end of that term.
- (c) Any independent chair may receive a fee for their role as determined by the Executive Committee from time to time. No chair appointed from within the Members will be entitled to any fee.
- (d) The Executive Committee may remove any chair at any time by a 75% majority vote in favour of the recommendation.

8.8 **Appointment of additional Executive Committee Members:** The Executive Committee may appoint such other number of representatives, who are not precluded, by any relevant legislation, from being an Executive Committee Member, to be members of the Executive Committee and for such term as the Executive Committee decides from time to time. Such members may be removed and/or replaced by a 75% of those Executive Committee Members appointed pursuant to clause 8.3.

8.9 **Powers and Duties:** The Executive Committee may exercise all powers of the Association as are not, by the Act or by the Constitution, required to be exercised by the Association at a Meeting, and without limiting the generality of this clause, may:

- (a) appoint an Executive Director; and
- (b) appoint such other officers or representatives of the Association as it considers appropriate.

Each member of the Executive Committee and each officer shall owe the following duties to the Association:

- to act in good faith and in what they believe to be in the best interests of the Association, and use their powers for proper purposes;
- to comply with the Incorporated Societies Act and this Constitution, except where this Constitution contradicts the Act;
- to exercise the degree of care and diligence that a reasonable person with the same responsibilities within the Association would exercise in the circumstances applying at the time;
- to not allow the activities of the Association to be carried on recklessly or in a manner that is likely to create a substantial risk of serious loss to the Association's creditors;
- agree, cause or allow the activities of the Association to be carried on in a manner likely to create a substantial risk of serious loss to the Association's creditors; and
- to not allow the Association to incur obligations that the Executive Committee Member does not reasonably believe will be fulfilled.

8.10 **Meetings:** The Executive Committee shall meet at such times and places and in such manner as it shall determine and shall regulate its own proceedings provided that:

- (a) prior written notice of any meeting of the Executive Committee must be given to all Executive Committee Members; and
 - (b) representatives of the Executive Committee can be represented at meetings:
 - (i) in person; or
 - (ii) by means of a proxy in writing in favour of another Executive Committee Member or observer as provided for in clause 8.14.
- 8.11 **Quorum:** A 75% majority of Executive Committee Members present shall comprise a quorum for meetings of the Executive Committee. No business shall be transacted unless a quorum is present.
- 8.12 **Consensus:** Except as provided in clause 7.3, all resolutions of the Executive Committee shall be by a 75% majority only.
- 8.13 **Resolutions in writing:** A resolution in writing, signed or assented to by a 75% majority of Executive Committee Members then entitled to receive notice of an Executive Committee meeting, is as valid and effective as if it had been passed at a meeting of the Executive Committee duly convened and held. Any such resolution may consist of several documents (including email, text message or other similar means of electronic communication) each signed or assented to by 1 or more Executive Committee Members. A copy of any such resolution must be entered in the minute book of Executive Committee proceedings.
- 8.14 **Observers:** If a Member (Appointing Member) requests, the Executive Committee may permit such Appointing Member to appoint a representative to attend any or all meeting(s) of the Executive Committee as an observer. Such observer may participate in deliberations at the meeting and, subject to the following sentence, shall not have a voting right. If the Executive Committee Member appointed by the same Appointing Member is absent from a meeting of the Executive Committee, such observer shall be deemed to have been appointed as proxy for such absent Executive Committee Member with the right to vote on their behalf.
9. **CONFLICTS OF INTEREST:**
- 9.1 **Definition of Financial Interest:** For the purposes of this clause 9, an Executive Committee Member or an officer has a Financial Interest in a matter if he or she:
- (a) may obtain a financial benefit from the matter;
 - (b) is the spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, nephew, niece, uncle, aunt, or first cousin of a person who may obtain a financial benefit from the matter;
 - (c) may have a financial interest in a person to which the matter relates; or
 - (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in a person to which the matter relates.

The following interests are excluded from the definition of Financial Interest:

- (e) remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the officer or Executive Committee Member when carrying out their responsibilities under the Act or this Constitution; and
- (f) an interest that the officer or Executive Committee Member has where such interest is the same or substantially the same as the benefit or interest of all or most other Members due to the membership of those Members.

9.2 **Disclosure of interest:** Any officer or Executive Committee Member who has a Financial Interest (Interested Party) in a matter being considered by or affecting the Association must, as soon as practically possible after they become aware of his or her Financial Interest in the matter, disclose the nature and extent of his or her Financial Interest to the Executive Committee and in the interests register.

9.3 **General Disclosure:** For the purposes of clause 9.2, a general notice entered in the interests register and disclosed to the Executive Committee to the effect that an Executive Committee Member is a shareholder, director, officer, member or trustee of another named company or any other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with or that involves that company or person, is a sufficient disclosure of interest in relation to that matter.

9.4 **Interested Party may vote:** An Executive Committee Member shall not be precluded from attending any meeting or voting on any matter in which they have a Financial Interest or from signing any document relating to the matter on behalf of the Association or from doing any other thing in his or her capacity as an Executive Committee Member in relation to the matter. This clause modifies section 64 of the Act.

9.5 **Validity of the transaction unaffected:** A failure to comply with clause 9.2 does not affect the validity of any transaction entered into by the Association.

9.6 **Executive Committee to maintain a register:** The Executive Committee will maintain a register of disclosures under this clause 9 and will present a summary at each Annual General Meeting of Members of the nature and extent of any disclosures recorded during the year (but does not need to disclose the identity of the interested Member nor the details of the interest disclosed). The register of disclosures will not be open to inspection by Members of the Association or any other person.

10. **SUBCOMMITTEES**

10.1 **Establishment of Subcommittees:** The Executive Committee may, from time to time, establish and dissolve subcommittees consisting of such persons (whether or not Members) and for such purposes as it thinks fit, including, for example, a policy subcommittee to develop industry consensus and agreed industry-wide advocacy policies in relation to:

- (a) domestic regulation of the dairy industry; and
- (b) general public policy questions including, without limitation, environmental, animal welfare, biosecurity, food safety, bio-science, energy and transportation policy.

10.2 **Meeting Procedures: Unless otherwise resolved by the Executive Committee:**

- (a) the quorum of every subcommittee is half the members of the subcommittee;

- (b) the subcommittee shall have power to co-opt additional members to the extent the subcommittee resolves that it is necessary to fulfil the applicable purpose underling the subcommittee’s formation;
 - (c) no subcommittee shall have the authority to commit the Association to any obligation or financial expenditure without express written authority from the Executive Committee; and
 - (d) no subcommittee may delegate any of its powers or responsibilities.
- 10.3 **Resolutions:** Any subcommittee may act by resolution approved by a majority of the members of the subcommittee whether in person at a meeting or in writing. Any such resolution may consist of several documents (including email, text message or other similar means of electronic communication) each signed or assented to by 1 or more subcommittee members.
- 10.4 **Minutes of Subcommittee Meetings:** All resolutions of each subcommittee must be entered in that subcommittee’s minute book of subcommittee proceedings.

11. SECRETARIAT

- 11.1 **Administration:** The administration of the Association shall be conducted by an administrative team appointed by the Executive Committee (the “Secretariat”). This may be made up of employees and contractors, which includes persons on secondment from organisations that are both Members and non-members.
- 11.2 **Remuneration:** The Executive Committee may elect to remunerate the members of the Secretariat, provided that the Executive Committee is satisfied that, in their opinion, such remuneration is at arm’s length and in accordance with normal commercial terms and does not include any profit share, percentage of revenue or other reward linked to gains made by the Association.
- 11.3 **Resource:** Members acknowledge and agree that in principle, the administrative costs of the Association are to be shared among all Members, and shall be met from the membership fees set by the Executive Committee.
- 11.4 **Responsibilities:** The Secretariat shall act in accordance with lawful instructions from the Executive Committee, and will be responsible for:
- (a) keeping minutes of meetings of the Executive Committee and Members in a minute book;
 - (b) preparing and dispatching correspondence;
 - (c) keeping books and accounts;
 - (d) collecting all moneys due and payable to the Association;
 - (e) maintaining the Register;
 - (f) maintaining an up to date record of the Constitution of the Association and of any Executive Committee policy decisions;
 - (g) performing any other appropriate general administrative duties relating to the functions of the Association;

- (h) representing commonly agreed positions in discussions with external stakeholders, including government departments, media, and other trade associations; and
- (i) undertaking negotiations with external parties as necessary to progress commonly agreed positions of the Association.

12. MEETINGS OF THE ASSOCIATION

12.1 **Annual General Meeting:** An Annual General Meeting of Members shall be held not later than 31 December in each year or once in each 12-month period, and within 10 to 14 months of the previous Annual General Meeting.

12.2 **Business at Annual General Meeting:** The business of the Annual General Meeting shall include:

- (a) considering a report to be furnished by the Executive Committee on the previous 12 months' activities;
- (b) receiving from the Executive Committee, a financial report and statement of accounts for the preceding year;
- (c) receiving from the Executive Committee, a summary of the entries made on the interest register; and
- (d) considering and conducting such other business as may properly be brought before the meeting.

12.3 **Special General Meeting:** A Special General Meeting may be called at any time either:

- (a) by the Executive Committee; or
- (b) by the Executive Committee within 14 days of receipt of a written request signed by not less than 2 Members stating the purpose for which such meeting is required.

12.4 **Notice of Business:** Not less than 21 days before an Annual General Meeting or Special General Meeting, notice thereof and of the business to be transacted, together with a form of proxy shall be given to every Member.

13. PROCEDURES AT MEETINGS OF THE ASSOCIATION

13.1 **Quorum:** No business shall be transacted at any Meeting unless a quorum is present. The quorum shall be one half of all Members, whether personally present or represented by a proxy.

13.2 **Consensus:** Except as provided in clause 13.7, all resolutions of the Members at Meetings shall be by a 75% majority only.

13.3 **Chairperson:** At all Meetings, the chair of the Executive Committee (appointed pursuant to clause 8.7), or in that person's absence another member of the Executive Committee shall take the chair.

- 13.4 **Votes:** Every Member entitled to vote at a Meeting shall have one vote either in person or by proxy vote which should be lodged in writing with the Chairperson not later than 24 hours before the Meeting. Except where otherwise provided in the Constitution, a 75% majority of all votes cast shall decide all questions.
- 13.5 **Method of Voting:** The mode of voting at all Meetings shall be by show of hands or, where required, or if any Member requests, by poll or secret ballot which shall be taken immediately.
- 13.6 **Resolutions in writing:** Subject to clause 13.7, a resolution in writing, signed or assented to by not less than 75% of Members who would be entitled to vote on that resolution at a Meeting is as valid and effective as if it had been passed at a Meeting duly convened and held. Any such resolution may consist of several documents (including email, text message or other similar means of electronic communication) each signed or assented to by 1 or more Members. A copy of any such resolution must be:
- (a) sent to an address for each Member who was entitled to vote, who did not approve the resolution and on whose behalf the resolution was not approved; and
 - (b) entered in the minute book of Member proceedings.
- 13.7 **Resolutions regarding third party funding commitments:** If Members are asked to vote or pass a resolution (at a Meeting or in writing) on any matter relating to contracts, partnerships or other arrangements to be entered into with third parties by the Association and that may result in Members being required to contribute on a pro rata basis (in accordance with milk solids processed by all Members) to funding in connection with such contract, partnership or arrangement, then notwithstanding anything to the contrary in the Constitution, such vote or resolution, as applicable, shall only be valid and effective if passed at a Meeting or in writing, signed or assented to by:
- (a) not less than 75% of Members who would be entitled to vote on that resolution; and
 - (b) Members who together account for not less than 85% of the milk solids processed by all Members.
14. **ALTERATION OF CONSTITUTION**
- 14.1 **Alteration:** Subject to clause 14.2, the Constitution may be altered, revised or otherwise amended:
- (a) by a resolution passed by a three quarters majority of Members entitled to vote in person or by proxy at a general meeting of the Association of which not less than 21 days notice of the meeting and such alteration, revision or other amendment has been given; or
 - (b) by a resolution signed or approved by a three quarters majority of Members achieved through a postal or email voting mechanism prescribed by the Executive Committee whereby Members may each individually sign the resolution in counterpart and either facsimile or email a PDF of the signed counterpart of the resolution to the Secretariat.

14.2 **No Alteration of Certain Clauses:** No addition to, or alteration of clauses 3.1, 3.2, 14.2, 16.1(e), 16.1(f) or 19.2 shall be approved by the Association without prior approval of the Inland Revenue Department. The provisions and effect of this clause shall not be removed from the Constitution and shall be included and implied into any document replacing the Constitution.

14.3 **Notice to Registrar:** The Secretariat shall forthwith deliver notice of every alteration of the Constitution to the Registrar of Incorporated Societies in accordance with the provisions of the Act.

15. **BY-LAWS**

15.1 **Association:** The Executive Committee shall have the power from time to time to make by-laws or regulations it deems necessary, expedient or convenient for the proper conduct, control and management of the Association, and to alter or repeal any by-laws or regulations. If there is any conflict between the Constitution and any such by-laws or regulations, the Constitution shall prevail.

16. **CONTROL AND INVESTMENT OF FUNDS**

16.1 **Finances:** The following provisions shall apply to the Association's finances:

- (a) the finances of the Association shall be under the control of the Executive Committee;
- (b) the Association shall operate such bank accounts to be fixed from time to time by the Executive Committee;
- (c) all monies received on behalf of the Association should on receipt be paid to the credit of the Association in any such accounts as the Executive Committee may establish;
- (d) the signatories to any bank account shall be any two persons nominated from time to time by the Executive Committee;
- (e) the income of the Association from whatever source derived shall be applied towards the promotion of the objects of the Association and in accordance with the Constitution and no portion of funds shall be paid or transferred directly or indirectly to Members unless in return for any service actually rendered to the Association or in reimbursement of expenses or payments properly made on the Association's behalf;
- (f) notwithstanding clause 9, no Member or any person associated with a Member shall participate in or materially influence any decision made by the Association in respect of the payment to or on behalf of that Member or associated person of any income, benefit, or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value); and
- (g) the Executive Committee is entitled to invest such money of the Association that is from time to time available for investment:
 - (i) on deposit with any bank registered in New Zealand;
 - (ii) in New Zealand Government stock; or

- (iii) in secured debentures or stock of any company or organisation provided that such debenture or stock is rated AA or higher by an international credit agency.

17. ACCOUNTING RECORDS

- 17.1 **Financial year:** The financial year of the Association shall run from 1 April to 31 March.
- 17.2 **Maintenance of records:** The Executive Committee shall cause to be maintained books of records of the activities of the Association in accordance with accepted accounting practices and the legal requirements for incorporated societies under the laws of New Zealand.
- 17.3 **Auditor:** The Executive Committee may, and shall if required by law, appoint a suitably qualified auditor to audit the Association's financial statements in accordance with accepted accounting and prescribed auditing practices and any legal requirements.
- 17.4 **Financial Reporting:** The Executive Committee shall cause financial statements to be prepared if and to the extent required by any applicable law, subject to any permitted amendments or alterations to such requirements approved by Members pursuant to such law.

18. REVIEW

- 18.1 **Reviews:** Unless the Executive Committee agrees otherwise, the Association shall undertake a comprehensive review of its structure, funding, overall effectiveness and any other related matter on an annual basis.

19. WINDING UP

- 19.1 **Voluntary Winding Up:** The Association may be wound up voluntarily if:
 - (a) the Members at a Meeting pass a resolution requiring the Association to be wound up and authorising a Member to request the Registrar to remove the Association from the Incorporated Societies Register, and written notice of the resolution is sent to every Member no less than 30 days prior to the relevant Meeting; or
 - (b) the Members at a Meeting pass a resolution requiring the Association to be wound up and appointing a liquidator to the Association, and written notice of the resolution is sent to every Member no less than 30 days prior to the relevant Meeting,

subject to and otherwise in accordance with the Act.

- 19.2 **Distribution of Assets on Winding up:** Upon the winding up or dissolution of the Association, any surplus assets after the payment of costs, debts and liabilities of the Association shall not be paid to or distributed among the Members but shall be paid to some other non-profit organisation or organisations within New Zealand having similar objects of the Association and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on this Association, such non-profit organisation or organisations to be determined by the Members at or before the time of dissolution or, on default of such decision as the Registrar of Incorporated Societies may direct.

20. INDEMNITY BY MEMBERS

- 20.1 Members with representatives on the Executive Committee shall each indemnify their representative to the fullest extent permissible by law. This shall not absolve any Executive Committee Member, officer or other agent of the Association from taking proper care and paying full attention to their fiduciary and statutory duties in acting responsibly with due diligence and where necessary obtaining proper knowledge and seeking competent advice pursuant to the carrying out of their elected office or paid employment.

21. INDEMNITY AND INSURANCE BY ASSOCIATION

- 21.1 **Indemnity for liability:** The Association shall indemnify each Executive Committee Member, Member and employee in respect of:

- (a) liability to any person other than the Association for any act or omission in their capacity as an Executive Committee Member, Member or employee, not being criminal liability or a liability that arises out of a failure to act in good faith and in what the Executive Committee Member, Member or employee believes is in the best interests of the Association when acting in the capacity as an Executive Committee Member, Member or employee; and
- (b) costs incurred by that Executive Committee Member, Member or employee in defending or settling any claim or proceeding relating to any such liability.

- 21.2 **Indemnity for costs:** The Association shall indemnify each Executive Committee Member, Member and employee for any costs incurred by any of them in defending or settling any proceeding:

- (a) that relates to the liability for any act or omission in their capacity as an Executive Committee Member, Member or employee of the Association, not being criminal liability or a liability that arises out of a failure to act in good faith and in what the Executive Committee Member, Member or employee believes is the best interests of the Association when acting in the capacity as a Committee Member, Member or employee; and
- (b) in which judgment is given in their favour, or in which they are acquitted, or is discontinued.

- 21.3 **Insurance:** The Association shall, with the prior approval of the Executive Committee, effect insurance for each Executive Committee Member, Member and employee in respect of:

- (a) liability, not being criminal liability, for any act or omission in their capacity as an Executive Committee Member, Member or employee; or
- (b) costs incurred by that Executive Committee Member, Member or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that Executive Committee Member, Member or employee in defending any criminal proceedings:
 - (i) that have been bought against the Executive Committee Member, Member or employee in relation to any act or omission in their capacity as an Executive Committee Member, Member or employee; and

- (ii) in which they are acquitted.

Executive Committee Members who vote in favour of authorising insurance under clause 21.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Association.

21.4 **Definitions:** For the purpose of this clause 21, “Executive Committee Member” includes an officer and former Executive Committee Member or officer, “Member” includes a former Member and “employee” includes a former employee.

22. CONFIDENTIALITY OF INFORMATION

22.1 **Obligation of Confidentiality:** Subject to paragraph 22.2, each Member, Executive Committee Member and member of the Secretariat agrees that Confidential Information shall not be disclosed to any other party other than:

- (a) to Members’ directors, officers, employees, agents and advisors on a need to know and confidential basis (each a **Recipient**);
- (b) in a manner and form approved by the Executive Director or chair of the Executive Committee (appointed pursuant to clause 8.7);
- (c) to the extent required to comply with applicable law, including the Commerce Act 1986 and any applicable listing rules of a recognised national stock exchange; provided that any such disclosure is only made to the extent required to comply with such law or listing rule and, prior to such disclosure, the applicable Member notifies the Association of the requirement to make such disclosure and that (i) the Member seeks confidential treatment of any such disclosure (to the extent practicable and permitted under the applicable law or listing rule) and (ii) the disclosure is made in accordance with the requirements of the applicable law or listing rule;

22.2 **Commercially Sensitive Information:** Any Commercially Sensitive Information, which must be disclosed to a Member, a Recipient, an Executive Committee Member or a member of the Secretariat for the purposes of meeting the objectives of the Association set out at clause 3 of this Constitution, will be done on a strict need to know and confidential basis. For the purposes of complying with the Commerce Act 1986, each Recipient, Executive Committee Member and member of the Secretariat shall not:

- (a) disclose any Commercially Sensitive Information to the Member or Members he or she represents (including employees, agents, consultants, advisors and contractors of such Member or Members) otherwise than in accordance with applicable law; or
- (b) use, or be seen to use, any Commercially Sensitive Information for any purpose other than meeting the objectives set out at clause 3 of this Constitution or otherwise in accordance with applicable law.

22.3 **Continuity of obligations: These obligations of confidentiality shall:**

- (a) for a Member, survive any suspension, expulsion, termination, registration or expiry of membership;
- (b) for an officer, director, employee, agent, or advisor of any Member, survive the end of their relationship with the applicable Member;

- (c) for an Executive Committee Member or officer of the association, survive any resignation or removal from office; and
- (d) for a member of the Secretariat, survive the end of their engagement.

22.4 **Breaches of this clause:** A Member is responsible for any breaches of this clause 22 caused by it, or any person that receives Confidential Information on behalf of such Member.

23. REGISTERED OFFICE

23.1 The registered office of the Association shall be at such place as the Executive Committee shall from time to time determine. Due notice of every change of the place of the registered office shall be given to the Registrar of Incorporated Societies as required under the Act.

24. CONTACT PERSON

24.1 In accordance with the Act, the Executive Committee shall from time to time appoint a person to the position of Contact Person and ensure that the Association has a Contact Person at all times.

24.2 The office of Contact Person may be held separately or in conjunction with any other office in the Association or by any Executive Committee Member.

24.3 The Contact Person shall be the person whom the Registrar can contact when needed.

25. NOTICES

25.1 **Form of Notices:** Any notice required to be given to Members pursuant to this Constitution may be given in writing by sending the notice by ordinary pre-paid mail, facsimile or electronic means to the addresses or numbers recorded in the Register of Members for each Member entitled to receive such notice.

25.2 **Deemed Delivery:** A notice sent pursuant to clause 25.1 shall be deemed to have been delivered:

- (a) if sent by post, on the third day after posting;
- (b) if sent by facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (c) if sent by electronic means, on the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause).

26. AFFILIATION

26.1 The Association shall have power to affiliate with and otherwise support, whether by means of financial contribution or otherwise, any person, association, organisation or other body whose objects are consistent with or similar to those of the Association.

27. DISPUTES RESOLUION PROCEDURE

27.1 How a complaint is made:

- (a) A Member, an officer or an Executive Committee Member may make a complaint by giving to the Executive Committee (or the complaints subcommittee) a notice in writing that:
 - (i) states that the Member, an officer or an Executive Committee Member is starting a procedure for resolving a dispute in accordance with this Constitution; and
 - (ii) sets out the allegation to which the dispute relates and whom the allegation is against; and
 - (iii) sets out any other information reasonably required by the Association.
- (b) The Association may make a complaint involving an allegation against a Member, an officer or an Executive Committee Member by giving to the Member, an officer or the Executive Committee Member a notice in writing that:
 - (i) states that the Association is starting a procedure for resolving a dispute in accordance with this Constitution; and
 - (ii) sets out the allegation to which the dispute relates.
- (c) The information given under clauses 27.1(a) and 27.1(b) must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

27.2 Person who makes complaint has a right to be heard:

- (a) A Member, an officer or an Executive Committee Member who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
- (b) If the Association makes a complaint:
 - (i) the Association has a right to be heard before the complaint is resolved or any outcome is determined; and
 - (ii) an Executive Committee Member may exercise that right on behalf of the Association.
- (c) Without limiting the manner in which the Member, an officer, Executive Committee Member, or Association may be given the right to be heard, they must be taken to have been given the right if:
 - (i) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (ii) an oral hearing is held if the Executive Committee considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iii) an oral hearing (if any) is held before the Executive Committee or other decision maker; and

- (iv) the Member's, officer's, Executive Committee Member's, or Association's written statement or submissions (if any) are considered by the Executive Committee or other decision maker.

27.3 Person who is subject of complaint has right to be heard:

- (a) This clause applies if a complaint involves an allegation that a Member, an officer, an Executive Committee Member, or the Association (**respondent**):
 - (i) has engaged in misconduct; or
 - (ii) has breached, or is likely to breach, a duty under this Constitution or any by-laws or the Act; or
 - (iii) has damaged the rights or interests of a Member or the rights or interests of Members generally.
- (b) The respondent has a right to be heard before the complaint is resolved or any outcome is determined.
- (c) If the respondent is the Association, an Executive Committee Member may exercise the right on behalf of the Association.
- (d) Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if:
 - (i) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and
 - (ii) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
 - (iii) an oral hearing is held if the Executive Committee considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iv) an oral hearing (if any) is held before the Executive Committee or other decision maker; and
 - (v) the respondent's written statement or submissions (if any) are considered by the decision maker.

27.4 Investigating and determining complaint or grievance: The Executive Committee must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with this Constitution, ensure that the dispute is investigated and determined in a fair, efficient and effective manner.

27.5 Executive Committee may decide not to progress complaint: Despite clause 27.4, the Executive Committee may decide not to proceed further with a complaint if the Executive Committee determines that:

- (a) the complaint is trivial; or
- (b) the complaint does not appear to disclose or involve any allegation of the following kind:

- (i) that a Member, an officer or an Executive Committee Member has engaged in material misconduct or
 - (ii) that a Member, an officer, an Executive Committee Member, or the Association has materially breached, or is likely to materially breach, a duty under this Constitution or any by-laws or the Act; or
 - (iii) that a Member's rights or interests or Members' rights or interests generally have been materially damaged;
- (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
 - (d) the person who makes the complaint has an insignificant interest in the matter; or
 - (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under this Constitution; or
 - (f) there has been undue delay in making the complaint.

27.6 **Executive Committee may refer complaint:** The Executive Committee may refer a complaint to:

- (a) a subcommittee or an external person to investigate and report;
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision; or
- (c) any form of consensual alternative dispute resolution practice (subject to the written consent of all parties to the complaint).

27.7 **Decision makers:** A person may not act as a decision maker in relation to a complaint or grievance if two or more Executive Committee Members or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be:

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.