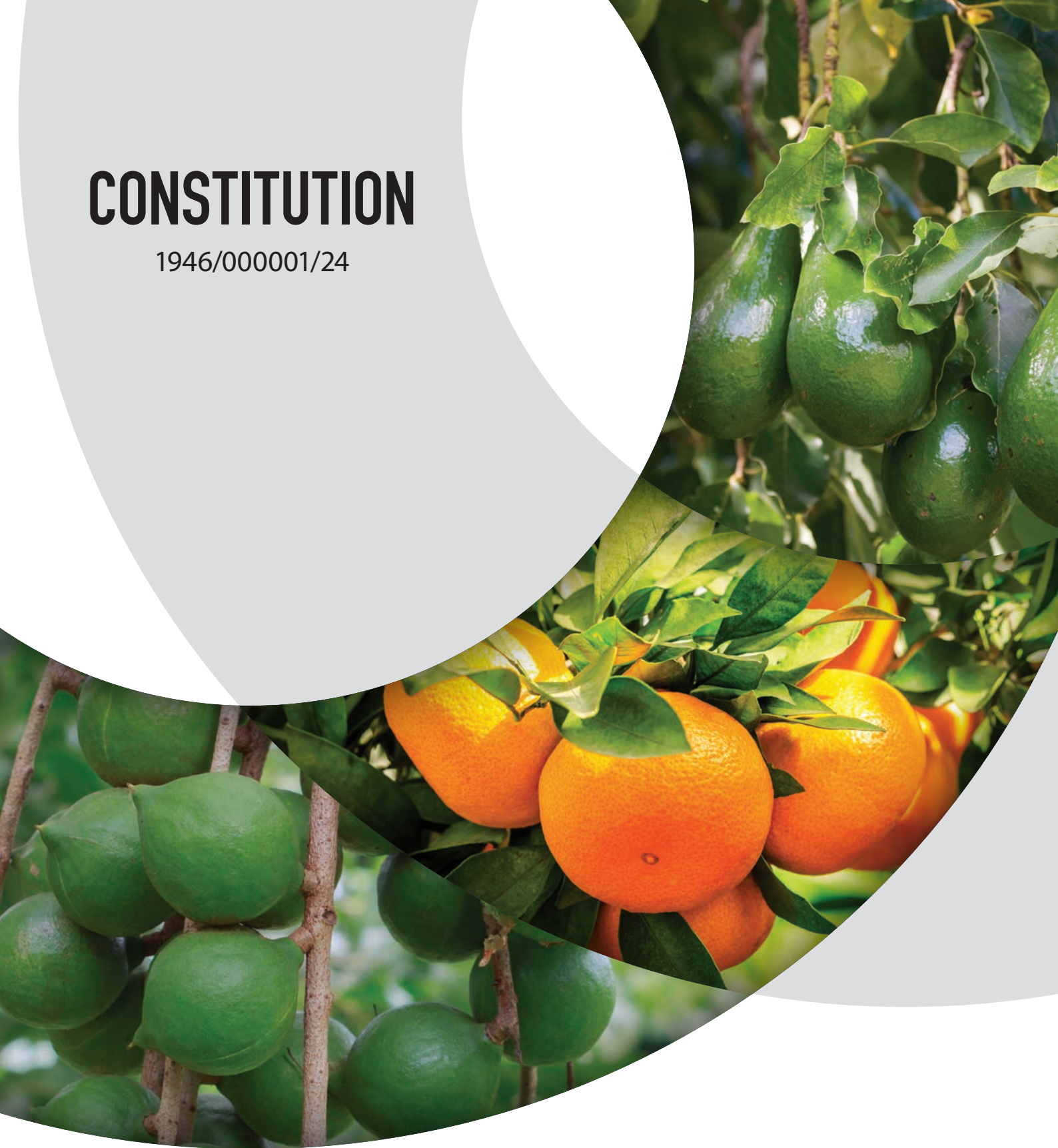


# CONSTITUTION

1946/000001/24



COASTAL FARMERS' CO-OPERATIVE LIMITED  
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## 1. NAME

- 1.1 The name of the Co-operative is Coastal Farmers' Co-operative Limited.
- 1.2 The Co-operative is authorised to use a trademark name registered to it by the registrar.

## 2. FORM OF CO-OPERATIVE

- 2.1 This is the constitution of a primary co-operative in terms of the provisions of the Co-operatives Act, 2005 (Act 14 of 2005) as amended.
- 2.2 The Co-operative may conclude transactions with members and non-members.
- 2.3 The Co-operative issues no shares.

## 3. DEFINITIONS

In this constitution, unless the context indicates otherwise, a word or expression to which a meaning is attached in the Co-operatives Act, 2005 shall have a similar meaning and:

- 3.1 "Act" means the Co-operatives Act, 2005 (Act No. 14 of 2005) as amended;
- 3.2 "Board" means the board of Directors of the Co-operative;
- 3.3 "Co-operative" means the Coastal Farmers' Co-operative Limited;
- 3.4 "days" means calendar days;
- 3.5 "Director" means a natural person appointed or elected to the Board;
- 3.6 "General Reserve" means an indivisible reserve of the Co-operative of not less than 1% and not more than 5% of the Co-operative's net asset value as reflected in the most recent audited report;
- 3.7 "Present" means, in relation to meetings, to be present in person or (unless the wording stipulates the person is to be physically present) able to participate in the meeting by means of a telephonic, electronic or other communication facility if this facility permits participants to communicate adequately with each other during the meeting, or to be represented by a proxy who is present with each other during the meeting, or to be represented by a proxy who is present in person or able to participate in the meeting by of a similar telephonic, electronic or other communication facility;
- 3.8 "Secretary" means the secretary of the Co-operative as appointed by the Board;
- 3.9 "Share" means a share in the Coastal Farmers' Co-operative Limited;
- 3.10 A reference in this constitution to the masculine gender shall also include the feminine and neutral gender and vice versa.

## 4. REGISTERED OFFICE

The registered office of the Co-operative is located at 2 Flanders Drive, Mount Edgecombe 4300, KwaZulu-Natal.

## 5. MAIN OBJECTIVES

The main objectives of the Co-operative are to:

- 5.1 hire, buy or otherwise acquire and to let, sell or otherwise supply requisites, necessary or used for or in connection with farming operations;
- 5.2 manufacture or process feed materials, fertilizers or other farming requisites;
- 5.3 hire, establish or erect and to use or make available for use facilities necessary for or useful in connection with farming operations;
- 5.4 hire, buy or otherwise acquire, or produce or manufacture and to let, sell or otherwise supply services or things required for the purposes of farming;
- 5.5 render services necessary for or useful in connection with farming operations;
- 5.6 render any other services, including services relating to the buying, selling and leasing of immovable agricultural property;

- 5.7 to undertake such other businesses that may add value to farming operations;
- 5.8 acquire rights in any intellectual property that may be to the benefit of the Co-operative;
- 5.9 provide appropriate education and training and support to members, elected representatives and employees of the Co-operative;
- 5.10 do all things necessary to comply with good corporate governance; and
- 5.11 undertake projects aligned to the business of the Co-operative that are aimed at community development.

## 6. BUSINESS AND RESTRICTIONS ON BUSINESS

- 6.1 The business of the Co-operative is to conduct:
  - 6.1.1 the business set out in clause 5;
  - 6.1.2 all business necessary and/or desirable to achieve the main objectives outlined in clause 5 above; and/or
  - 6.1.3 all business ancillary to the above.
- 6.2 Subject to the foregoing, there are no restrictions on the business of the Co-operative and the Co-operative has unlimited powers and may do all things necessary and legal in the carrying out of its objectives.
- 6.3 Without prejudice to the provisions of clause 6.2, it is specifically noted that the Co-operative may:
  - 6.3.1 obtain loans from members and registered financial institutions to carry out the objectives of the Co-operative;
  - 6.3.2 encumber any assets of the Co-operative whether movable or immovable, corporeal or incorporeal by way of any recognised form of security to secure any loans for the Co-operative;
  - 6.3.3 invest monies in registered financial institutions;
  - 6.3.4 let, sell, purchase or otherwise dispose of movable and immovable property, including rights thereon, which are not immediately required for the carrying out of its objectives; and
  - 6.3.5 take any necessary measures to protect its interests.

## 7. MEMBERSHIP

- 7.1 An applicant must be a natural person or juristic person carrying on farming operations on their own account, whether alone or together with any other person or in addition to any other business, occupation or trade.
- 7.2 Application for membership shall be made on the form provided for that purpose.
- 7.3 The Board shall consider every application for membership and has the right to accept or reject an application without assigning any reason for doing so.
- 7.4 The Board shall, within three months after receipt of an application for membership, notify the applicant of its decision.
- 7.5 Members which are juristic persons must notify the Co-operative immediately of any changes in its ownership;
- 7.6 Members should appoint a representative to act on its behalf in all matters related to the member and notify the Co-operative accordingly. Any actions taken by the representative shall be regarded as duly authorised by the said representative.

## 8. MEMBERSHIP FEE

There is no membership fee.

## 9. RIGHTS OF MEMBERS

- 9.1 A member shall have the following rights:
  - 9.1.1 to have access to the services offered by the Co-operative and to do business with or through the Co-operative;
  - 9.1.2 to attend and vote at meetings of members;
  - 9.1.3 to be allocated and credited or paid a portion of the surplus that is not transferred to the General Reserve should such an allocation be made by the Board in accordance with the provisions of clause 43; and
  - 9.1.4 to call a special general meeting as provided for herein.

## 10. LIABILITY AND OBLIGATIONS OF MEMBERS

- 10.1 The liability of a member is limited to an amount equal to any amount as is owed to the Co-operative pursuant to his membership of the Co-operative, as well as any obligations of that member to the Co-operative pursuant to a contract between the member and the Co-operative.
- 10.2 All members shall adhere to and abide by this Constitution and any rules, by-laws and policies of the Co-operative.
- 10.3 Members shall participate in the business of the Co-operative subject to the terms of this Constitution and must comply fully with the terms of the Co-operative's standard trading agreements from time to time.
- 10.4 Members must notify the Co-operative in writing whenever any of their personal details change.

## 11. TRANSFER OF MEMBERSHIP

- 11.1 Membership and member loans may be transferred only with the approval and on the authority of the Board, which shall satisfy itself that the proposed transferee is qualified to be a member of the Co-operative.
- 11.2 The Board may at any time refuse to approve and register a proposed transfer, subject to the Act.
- 11.3 The transfer of any membership and/or member loans shall be in writing in such form and signed in such manner as the Board from time to time may stipulate.
- 11.4 All rights and obligations attached to membership and/or member loans will transfer with the membership, which shall take effect when the transfer is approved by the Board.

## 12. TERMINATION OF MEMBERSHIP

- 12.1 Membership shall terminate in the following instances, subject to what is stated below:
  - 12.1.1 Death (in the case of a member who is a natural person);
  - 12.1.2 Deregistration (in the case of a member which is a company or close corporation);
  - 12.1.3 Insolvency or liquidation;
  - 12.1.4 Inactivity;
  - 12.1.5 Resignation; or
  - 12.1.6 Expulsion;
- 12.2 Upon termination of membership for any reason, subject to the Act and this constitution, the Co-operative shall repay any loan made by the member to the Co-operative.
- 12.3 Any amount payable by the Co-operative to any member as a result of the termination of membership or for any other reason may be set off against any debt for the payment of which the member or his estate is liable.
- 12.4 Termination of membership does not release the member or his estate from any debt or obligation to the Co-operative or any contract between the member and the Co-operative.

## 13. TERMINATION ON DEATH

The membership of a member who has died may be transferred to a member of that deceased member's family or another person appointed by the executor of the deceased member's estate, subject to the approval by the Board in terms of clause 11. In the event of such transfer not taking place, the provisions of clauses 12.2 to 12.4 shall apply and, in addition, any monetary rights that had accrued to the deceased member as at the date of death (e.g. the right to receive a patronage proportion) shall be due to the deceased member's estate.

## 14. TERMINATION ON DEREGISTRATION

The membership of a member which is a company or close corporation which has become deregistered shall be deemed to have terminated on the day prior to the date of deregistration, and any other amount due to the member by the Co-operative (after any set-offs) shall be transferred to a special reserve. Should the deregistered member's registration be reinstated, it may re-apply to the Board for membership in terms of clause 7. Should the Board accept the application

within three years of the date of termination of membership the Board may, at its discretion, reinstate some or all of the rights (including monetary rights) that had accrued to the deregistered member as at the date of termination of membership. Any amount remaining in the special reserve after three years of the date of termination of membership shall be transferred to the General Reserve.

## 15. TERMINATION WHEN A MEMBER IS INACTIVE OR IN LIQUIDATION

- 15.1 Whenever:
- 15.1.1 in the opinion of the Board, a member does not actively participate in the activities of the Co-operative for a period exceeding three (3) years; or
  - 15.1.2 a member is in liquidation or business rescue his membership may be terminated by resolution of the Board and the member shall be notified accordingly.
- 15.2 Upon termination of his membership, the provisions of clauses 12.2 to 12.4 shall apply save that if the member cannot be located by the Secretary within six months of the date of termination, the amount paid by the member for his Shares shall be transferred to the General Reserve.

## 16. RESIGNATION

The resignation of a member takes effect upon the date the Board approves same and the provisions of clauses 12.2 to 12.4 shall apply.

## 17. CONDITIONS AND PROCESS FOR SUSPENSION AND TERMINATION

- 17.1 A member who contravenes a provision of this Constitution and/or the Act and/or has failed to comply with his contractual obligations to the Co-operative and/or in the opinion of the Board has brought the Co-operative into disrepute, may
- 17.2 by resolution of the Board, have his membership terminated or be suspended as a member for a period to be determined by the Board but which shall not be longer than until the date of the next annual general meeting;
- 17.3 The suspension of a member may be revoked by resolution of the Board at any time.
- 17.4 Before a member can be suspended or his membership terminated, he has to be given prior written notice of the intention of the Board and an opportunity to make representations before the Board or Committee of the Board, duly appointed for the purpose.
- 17.5 The notice to such member must contain the following particulars:
- 17.5.1 the circumstances that have led to the proposed suspension or termination of membership; and
  - 17.5.2 a time when, and place where the member may appear in person, before the Board or a duly authorised committee to make representations and answer questions put to him.
- 17.6 The Board must notify a member in writing if it is decided to suspend or terminate his membership, of:
- 17.6.1 the reasons for the decision;
  - 17.6.2 the date on which the suspension or expulsion comes into effect;
  - 17.6.3 period of time during which the suspension will apply; and
  - 17.6.4 any other disciplinary measures which may be taken;
- 17.7 A decision by the Board after the members representations, as the case may be is final.

## 18. EFFECT OF SUSPENSION OR COMPULSORY TERMINATION

- 18.1 While under suspension a member forfeits his right to attend general meetings or to vote thereat in person or by proxy.
- 18.2 The Board may furthermore stipulate that certain or all transactions with a member be suspended for the period of his suspension.

- 18.3 The Board may impose any other reasonable and fair disciplinary measures including but not limited to an order to pay wasted expenses.
- 18.4 Should a member's membership be terminated by resolution of the Board then, the provisions of clauses 12.2 to 12.4 shall apply.

## 19. GENERAL MEETINGS

- 19.1 The Co-operative shall hold its annual general meeting within 6 months after the end of each financial year.
- 19.2 The annual general meeting must:
- 19.2.1 Appoint an auditor;
  - 19.2.2 Approve a report of the Board on the affairs of the Co-operative for the previous financial year;
  - 19.2.3 Approve the financial statements and auditor's report where applicable for the previous financial year;
  - 19.2.4 Elect Directors;
  - 19.2.5 Decide on the future business of the Co-operative;
  - 19.2.6 Consider the activity plan presented by the Board (as defined in section 29(3) of the Act).
- 19.3 The Co-operative may from time to time in addition to its annual general meeting hold special general meetings of its members.
- 19.4 A member of the Co-operative may attend a meeting of the Cooperative by means of a telephonic, electronic or other communication facility, if this facility permits participants to communicate adequately with each other during the meeting, it being recorded that there is no duty on the Co-operative to provide such facilities.
- 19.5 The only business to be conducted at a general meeting will be as set out in the notice convening the meeting.
- 19.6
- 19.6.1 Notwithstanding anything to the contrary in this constitution, a resolution proposed by the Board that could be voted on at a general meeting may instead be:
    - 19.6.1.1 submitted for consideration to all the members; and
    - 19.6.1.2 Voted on in writing by the members within 20 business days after the resolution was submitted to them.
  - 19.6.2 A resolution contemplated in clause 19.6.1
    - 19.6.2.1 will have been adopted if it is supported by a sufficient number of members to pass the resolution had the resolution been submitted to a physical meeting with a minimum quorum present; and
    - 19.6.2.2 if adopted, has the same effect as if it had been approved by voting at a meeting.
  - 19.6.3 Within 10 business days after adopting a resolution, or conducting an election of directors, in terms of this clause, the Co-operative must deliver a statement describing the results of the vote or election to every member.

## 20. CONVENING OF MEMBERS' MEETINGS

- 20.1 An annual general meeting shall be convened by the Board.
- 20.2 A special general meeting may be convened:
- 20.2.1 by at least two Directors;
  - 20.2.2 or by five or more members of the Co-operative constituting in number at least 10% (ten percent) of all the members of the Co-operative: Provided that such members shall not be entitled to convene a special general meeting unless they have beforehand in writing petitioned the Boards to convene such a meeting and the meeting is not convened within 21 (twenty one) days from the date the petition was lodged, or unless for any reason there are no Directors to whom such a petition can be addressed.
  - 20.2.3 Any meeting convened in terms of sub-clause 20.2.2 by the petitioners shall, as far as possible, be convened and held in the same manner as is prescribed for meetings convened and held by the Board and any reasonable

expense incurred by the petitioners in convening the meeting shall be refunded to the petitioners by the Co-operative.

## 21. NOTICE OF GENERAL MEETING

- 21.1 A general meeting shall be convened by at least 14 days' notice in writing to each member of the Co-operative.
- 21.2 The notice convening the meeting shall in addition to the time and place of the meeting state the purpose for which it is convened.
- 21.3 A notice may be delivered personally, forwarded by post to the member at his registered address, emailed to the registered email address of the member or faxed to the registered fax number of the member and may, in the case of an annual general meeting, be published on the Co-operative's website or otherwise distributed.
- 21.4 A notice will be deemed to be received by a member:
  - 21.4.1 If it is delivered personally, on the day it is delivered;
  - 21.4.2 If it is sent by post, on the fifth day after posting;
  - 21.4.3 If it is sent by email or fax, on the day after it is sent;
  - 21.4.4 If, in the case of an annual general meeting, it is published on the Co-operative's website or otherwise published, 30 days after such publication.
- 21.5 Non-receipt by a member of a notice of a general meeting of the Co-operative does not render such meeting invalid.
- 21.6 If a notice of a meeting is returned to the Co-operative because the member to whom it was sent is no longer resident at the registered address, or the email address or the fax number does not exist or does not function, the Co-operative shall be relieved of its obligation to send further notices of meetings to the member concerned until the member requests that such notices be sent to his new address.
- 21.7 No business other than that stipulated in the Notice of the meeting shall be considered or discussed, at such a general meeting.

## 22. QUORUMS

- 22.1 A quorum for a general meeting shall be constituted -
  - 22.1.1 by at least five members, if the number of members of the Co-operative is not more than fifty;
  - 22.1.2 by at least one tenth of the members of the Co-operative, if the number of members of the Co-operative is more than fifty but not more than two hundred;
  - 22.1.3 by twenty members plus at least one percent of the members of the Co-operative in excess of two hundred, if the number of members of the Co-operative is more than two hundred.
- 22.2 No item of business shall be transacted at any general meeting unless a quorum of members are present:
- 22.3 If within 30 minutes from the time appointed for the meeting a quorum is not present, the meeting;
  - 22.3.1 if convened by members or in consequence of a petition of members, must be cancelled;
  - 22.3.2 if otherwise convened, must be adjourned to the same day in the next week at the same time and place, or if that day is a public holiday, to the next day following which is not a public holiday.
  - 22.3.3 If the same venue is not available for an adjourned meeting it may be held at another venue within convenient distance if members are advised of the change of venue either by notice posted at the original venue or by some other means.
  - 22.3.4 If a quorum is not present within 30 minutes after the time fixed for an adjourned meeting, the members present, provided they are not less than five in number, shall be deemed to constitute a quorum: provided that a special resolution may not be passed by such a meeting.



## 23. CHAIRPERSON OF GENERAL MEETINGS

- 23.1 The chairperson of the Board or in his absence the vice-chairperson or in the absence of both, another Director elected by the meeting shall act as chairperson of an annual general meeting.
- 23.2 A person elected by the meeting shall act as the chairperson of a special general meeting convened by members in terms of clause 20.2.2 of this Constitution.

## 24. VOTING BY MEMBERS

- 24.1 At a general meeting, voting may either be by show of hands, or by polling.
- 24.2 If voting is by show of hands, any person who is present at the meeting, whether as a member or as proxy for a member and entitled to exercise voting rights has one vote, irrespective of the number of voting rights that person would otherwise be entitled to exercise.
- 24.3 If voting on a particular matter is by polling, any person who is present at the meeting, whether as a member or as proxy for a member, has the number of votes determined in accordance with the voting rights of that person plus the voting rights of the members for whom he is a proxy.
- 24.4 A polled vote must be held on any particular matter to be voted on at a meeting if a demand for such a vote is made by:
- 24.4.1 at least five persons having the right to vote on that matter, either as a member or a proxy representing a member; or
- 24.4.2 a person who is, or persons who together are, entitled, as a member or proxy representing a member, to exercise at least 10% of the voting rights entitled to be voted on that matter.
- 24.5 For the purpose of a polled vote each member will get up to four additional votes on the following basis:
- 24.5.1 one additional vote if the total value of his business with the Co-operative during the last preceding financial year exceeded 0.0625% of the total turnover of the Co-operative;
- 24.5.2 two additional votes if the total value of such business exceeded 0.125% of the total turnover;
- 24.5.3 three additional votes if the total value of such business exceeded 0.25% of the total turnover;
- 24.5.4 four additional votes if the total value of such business exceeded 0.5%.
- 24.6 A vote by polling must be held in such manner as the chairperson stipulates. Scrutineers must be nominated to determine the result of the vote.
- 24.7 A declaration by the chairperson that a resolution has, on a show of hands or by ballot, been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the meeting, shall be conclusive proof thereof.
- 24.8 If no objection is raised at the relevant meeting in terms of the provisions of this constitution against the validity of any vote cast at the meeting, whether on a show of hands or by poll, every vote cast at the meeting that has not been disallowed shall for all purposes be deemed to be valid.
- 24.9 In the case of an equality of votes, whether on a show of hands or in a vote by poll, the chairperson of the meeting shall have a casting vote in addition to his deliberative vote.
- 24.10 Every matter submitted to a general meeting for resolution, except for a matter requiring a special resolution, shall be determined by a majority of votes recorded at the meeting.

## 25. RESOLUTIONS

- 25.1 The Board may propose any resolution to be considered by members.
- 25.2 A proposed resolution must be expressed with sufficient clarity and specificity; and accompanied by sufficient information or explanatory material to enable a member who is entitled to vote on the resolution to determine whether to participate in the meeting and to seek to influence the outcome of the vote on the resolution.
- 25.3 A resolution by a general meeting of the Co-operative shall constitute a special resolution if:

- 25.3.1 the notice by which the general meeting was convened specified particulars of the proposed resolution and stated the intention to propose same as a special resolution and
- 25.3.2 the resolution is passed by not less than two thirds of the members present, save in relation to a resolution related to the winding-up of the Co-operative or a conversion of the Co-operative into a company, which must be passed by at least 75 percent of the votes of all the members present.

## 26. APPOINTMENT OF PROXIES

- 26.1 A member may appoint another member as a proxy to attend, to speak and to vote in his stead at a general meeting of the Co-operative: Provided that
- 26.1.1 a proxy shall not be entitled to cast a vote except in a vote by ballot;
- 26.1.2 a member may not appoint more than one proxy;
- 26.1.3 the same person shall not act as proxy to more than 5% of members;
- 26.1.4 the number of votes by proxy may not exceed 25% of the total membership of the Co-operative. If, in any vote, this percentage is exceeded, the resolution in question shall be withdrawn and placed at the end of the agenda. Should the percentage again be exceeded on a second vote the meeting will be adjourned for one hour to allow proxies to consult the member(s) who appointed them as proxies. Should the percentage again be exceeded when the meeting resumes then the resolution will be deemed to be withdrawn.
- 26.2 Proxies, duly completed, shall be emailed or handed in or delivered at the registered office of the Co-operative not later than 48 hours (forty-eight) before the time fixed for the meeting.
- 26.3 The Secretary or other official acting on his behalf shall give a receipt to each proxy holder indicating the number of proxies held by him and the names of the appointor or appointors: Provided the proxy holder is not advised of any defect in any of the proxies held by him, this receipt shall be sufficient evidence at the meeting of the number of votes which may be cast by him. Without this receipt, voting by proxy shall not be allowed.
- 26.4 Any proxy form that has not been signed or properly completed or delivered to the Co-operative in time shall be excluded from the meeting.

## 27. MINUTES OF GENERAL MEETINGS

- 27.1 The Co-operative shall cause minutes to be kept of the proceedings at general meetings at the registered office of the Co-operative.
- 27.2 Minutes in respect of any general meeting must be provided to members on request and presented for approval at the next general meeting.
- 27.3 The minutes of any general meeting, signed by the chairperson, or after a resolution adopted in terms of the constitution of the Cooperative is, in the absence of evidence to the contrary, proof of the outcome of the vote or the resolution.

## 28. DELEGATION OF BOARD FUNCTIONS TO A COMMITTEE, DIRECTOR OR MANAGER

- 28.1 The affairs of the Co-operative shall be managed by the Board.
- 28.2 The Board may delegate one or more of its functions to a Director, a Committee, or manager of the Co-operative as it deems necessary or desirable.
- 28.3 Any Director, Committee or Manager so appointed must in the exercise of the powers and/or functions so delegated, abide by such rules as may be made and follow such instructions as may be issued, in regard thereto, by the Board.
- 28.4 A general manager shall be appointed by the Board.
- 28.5 The general manager shall appoint the executive management team which will, together with the general manager, exercise the executive functions of the Co-operative, as so delegated by the Board.
- 28.6 The executive management team shall be responsible for the day-to-day operation of the Co-operative and the Board shall delegate such powers to the executive management as it deems necessary or desirable.

## 29. BOARD OF DIRECTORS

- 29.1 The Board of Directors shall consist of a minimum of 3 and a maximum of 14 directors.
- 29.2 Directors shall represent members on a ward basis. The demarcation of wards as well as the number of directors to represent each ward shall, on recommendation of the board, be approved by members in general meeting.
- 29.3 The Board may appoint up to four Directors to the Board in order to obtain expertise on the Board each year after the annual general meeting. The total number of directors appointed as set out in this clause shall not exceed the number of directors elected by members.

## 30. PERSONS NOT COMPETENT TO BE DIRECTOR

- 30.1 In addition to the disqualifications contained in the Act, the following persons are not competent to be Directors:
- 30.1.1 Any person who is not a member or the authorised representative of a juristic person which holds membership, but this provision does not apply to directors appointed by the Board pursuant to clause 29.3;
- 30.1.2 any person who carries on or manages or is a director of any business or organisation that, in the opinion of the Board, competes with the activities of the Co-operative;
- 30.1.3 Any person over the age of 75 years: Provided that a director may complete his term of office, should he reach the age of 75 during his term of office.

## 31. TERM OF OFFICE

- 31.1 Subject to clause 33, the term of office of the elected Directors of the Co-operative shall be (3) three years.
- 31.2 Board-appointed directors shall retire each year at the Annual General Meeting.
- 31.3 Retiring Directors are eligible for re-election and re-appointment by the Board, as the case may be.

## 32. NOMINATION OF DIRECTORS AND VOTING FOR DIRECTORS

- 32.1 A member, including a retiring Director, qualifies for election as Director only if he is nominated in writing by at least five members in the ward he will represent and if his home farm is in that particular ward.
- 32.2 A member with more than one farm may only represent his home farm ward.
- 32.3 At least 60 (sixty) days prior to the date of the annual general meeting, members in a ward where a vacancy is going to occur, shall be notified in writing that nominations may be made for the relevant vacancy.
- 32.4 Nomination forms, duly signed by five members in the relevant ward who are qualified to vote at the annual general meeting, together with the nominee's written statement that he seeks election, shall be submitted to the registered office of the Co-operative at least 28 (twenty eight) days prior to the date on which the annual general meeting is to be held.
- 32.5 If only one candidate is nominated for a vacancy in respect of a particular ward, that candidate shall be declared elected at the annual general meeting. If the number of candidates nominated exceeds the number of vacancies on the board in a particular ward, an election shall take place at the annual general meeting by means of secret ballot/poll.
- 32.6 If insufficient or no nominations are received to fill a vacancy in respect of a particular ward the vacancy so caused shall be regarded as a casual vacancy to be filled in accordance with clause 33, subject to the restriction in clause 29.3.

## 33. FILLING OF A VACANCY ON THE BOARD

The Board may in the event of a vacancy of an elected Director on the Board by way of a Resolution appoint a Director for the remainder of the three-year period, provided that such resolution is ratified at the next general meeting of the co-operative.

### **34. CONDITIONS FOR VACATION OF OFFICE**

- 34.1 A Director shall vacate his office -
- 34.1.1 At the end of his term of office;
  - 34.1.2 If he becomes incompetent in terms of the Act or clause 32 of this constitution to hold the office of Director;
  - 34.1.3 If he absents himself from more than three consecutive meetings of the Board;
  - 34.1.4 Upon resigning; or
  - 34.1.5 If he is relieved of his office before the expiry of his term by resolution at a general meeting.

### **35. APPOINTMENT OF THE CHAIRPERSON OF THE BOARD**

- 35.1 At the first meeting of the Board held after the annual general meeting of members or when the necessity arises, the Directors shall elect from among themselves a chairperson and deputy chairperson.
- 35.2 The deputy-chairperson shall act as chairperson whenever the chairperson is absent or unable to act as chairperson, and if both the chairperson and deputy-chairperson are absent or unable to carry out their functions, the Board must elect another Director to be acting-chairperson during such absence or incapacity.
- 35.3 The chairperson of the Board shall vacate the office of chairperson if he
- 35.3.1 Ceases to be a Director; or
  - 35.3.2 Resigns as chairperson; or
  - 35.3.3 Is relieved of the office of chairperson by the Board.
- 35.4 The provisions of clause 35.3 shall be applicable mutatis mutandis to the vice-chairperson of the Board.

### **36. BOARD MEETINGS**

- 36.1 A meeting of the Board may be convened by the Board or the chairperson of the Board or any two Directors.
- 36.2 The majority of Directors shall constitute a quorum of a meeting of the Board.
- 36.3 Questions arising at a meeting of the Board shall be determined by a majority of the Directors present at the meeting and in the case of an equality of votes, the chairperson of the Board or the person acting as chairperson shall have a casting vote in addition to his deliberative vote.
- 36.4 A resolution passed by the Board or act performed under the authority of the Board is not invalid by reason only of the fact that when the resolution was passed or the act was authorised there was a vacancy on the Board or a person not entitled to sit as a Director sat as a Director, if the resolution was passed or the act was authorised by the requisite majority of the Directors entitled to sit as Directors who were present at the time.
- 36.5 A resolution in writing signed by all Directors entitled to vote on that resolution at a meeting of the Board is valid as if it had been passed at such a meeting.
- 36.6 The Secretary shall keep minutes of Board meetings at the registered office of the Co-operative.
- 36.7 The minutes of a Board meeting must indicate which Directors were present at the meeting.
- 36.8 Minutes in respect of any meeting of the Board must be circulated to the Directors as soon as possible after the meeting and presented for approval at the next Board meeting.
- 36.9 The minutes of any meeting of the Board purporting to be signed by the chairperson of the board or a person who acted as such are taken as proof, in any court, of what took place in that meeting.

### **37. POWERS AND RESTRICTIONS ON DIRECTORS**

- 37.1 The Directors are empowered to do all things necessary to execute their duties as provided for in the Act and this constitution and their powers are unrestricted.
- 37.2 The Board has the power to make rules consistent with this constitution and the Act concerning the holding of meetings or any other matter of procedure.

### 38. DIRECTORS' REMUNERATION

Directors shall be entitled to reasonable fees and allowances which must be approved by members at the annual general meeting.

### 39. FINANCIAL YEAR

The financial year of the Co-operative shall end on the last day of April of each year.

### 40. FINANCIAL RECORDS

- 40.1 The Co-operative shall keep such accounting records as are prescribed by the Act and which fairly reflect the state of affairs and business of the Co-operative and to explain the transactions and financial position of the business of the Co-operative.
- 40.2 The accounting records shall be kept at the offices of the Co-operative and may be stored at a secure offsite location.
- 40.3 Any records of preceding years may be kept at any other secured location.

### 41. AUDITED REPORT

The audited report shall be circulated to all members at least 14 days before the annual general meeting for consideration.

### 42. SURPLUSES

- 42.1 At the end of each financial year the Co-operative shall transfer a portion of any surplus in that financial year into the General Reserve: Provided that the Board may increase this percentage if the General Reserve nears 1% of the Co-operative's net asset value as reflected in its most recent audited report, or decrease this percentage if the indivisible reserve nears 5% of the Co-operative's net asset value as reflected in its most recent audited report.
- 42.2 The Board may transfer any part or the whole of any surplus that is not transferred to the General Reserve to any other reserve which may or may not be divisible.
- 42.3 The General Reserve may be utilised for the following purposes:
  - 42.3.1 to sustain the Co-operative during periods of financial distress;
  - 42.3.2 to finance capital expenditure;
  - 42.3.3 to finance training;
  - 42.3.4 any other purpose as approved by the Board
- 42.4 Any surplus that is not transferred to the General Reserve may be utilised for the following purposes;
  - 42.4.1 To pay interest on any amounts held to a member's credit, including any member loan;
  - 42.4.2 To pay any portion of the surplus allocated to the members in accordance with clause 43;
  - 42.4.3 To pay any other money due to a member; and any other purpose as approved by the Board.

### 43. PATRONAGE PROPORTION

- 43.1 The Board may allocate and credit or pay to the members a portion of the surplus that is not transferred to the General Reserve in proportion to the value of transactions conducted by a member with the Co-operative during a financial year.
- 43.2 For the purpose of clause 43.1, the Board will when determining the amount of business done by each member with the Cooperative in a financial year, take into account:
  - 43.2.1 the quantity and value of goods and services bought, sold, handled, marketed or dealt with by the Cooperative; provided.
  - 43.2.2 that the transactions conducted with or through a division of the Co-operative of which the gross profit margin after discounts is 1% (one percent) or less, shall for the aforementioned purposes, not be taken into account.

43.3 Subject to clause 13, the record date for determining which members are entitled to the allocation of a patronage proportion is the last day of the financial year of the Co-operative.

#### **44. WINDING UP**

Members will be entitled to share in any residue after the winding up of the Co-operative after the payment of all costs and claims in accordance with their patronage proportion over the five years which preceded the commencement of the winding-up of the Co-operative.

#### **45. CONVERSION**

Should the members decide to convert the Co-operative into a profit company, all members shall become shareholders of the company and be allocated shares in accordance with their total value of transactions conducted over the 7 (seven) years which preceded the special resolution converting the Co-operative into a company.

#### **46. GENERAL**

The Co-operative shall sue and be sued in the name of the Co-operative and all powers of attorney and documents in connection therewith shall be signed by the chairman of the Board, the Secretary or any Director or manager lawfully acting in that capacity.

#### **47. TRANSITIONAL ARRANGEMENTS**

On the date (but immediately after) this constitution becomes effective:

- 47.1 all pre-existing members of the Co-operative shall continue to be members and
- 47.2 the Co-operative shall redeem and cancel all pre-existing shares in the Co-operative and shall repay the holders of such shares the paid-up nominal value thereof.

Draft



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