



NZFBF

NEW ZEALAND
FINANCIAL BENCHMARK
FACILITY

NZFBF Limited Constitution

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NEW ZEALAND FINANCIAL BENCHMARK FACILITY

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CHANGE CONTROL

Date	Author	Update
July 2020	Simon Jensen	Draft document for review
April 2021	John Groom	Final
September 2021	John Groom	Board review

1. DEFINITIONS

Act means the Companies Act 1993.

Benchmarks means BKBM, the OCR Compund Index, Afternoon NZ Closing Rates (including NZ Swap, NZ Government Bond, NZ Overnight Indexed Swap, NZD/USD Basis Swap and NZ Credit Markets), together with such other rates (including fallback rates) as may be agreed from time to time between the Shareholder and the Company.

Board means the Board of Directors of the Company.

Board Charter means the document released by the Company that defines the roles, responsibilities and authorities of the Board of Directors as published and amended from time to time.

Business Day means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington, New Zealand.

Company means New Zealand Financial Benchmark Facility Limited.

Director means a person appointed as a director of the Company.

FMA means the Financial Markets Authority.

Independent Director is a Director that satisfied the independence criteria set out in the Board Charter as amended from time to time.

Letter of Appointment has the meaning given to it in clause 6.5(b).

Shareholder means the New Zealand Financial Markets Association.

Share means a share issued, or to be issued, by the Company.

2. CAPACITY AND POWERS OF THE COMPANY

- 2.1 Each of the Company, the Board, each Director and the Shareholder has the capacity, rights, powers and privileges set out in the Act except to the extent that they are modified by this Constitution.

3. PURPOSE OF THE COMPANY

- 3.1 The principal purpose of the Company is to perform the functions and duties, and exercise the powers, of a licensed benchmark administrator under the Financial Markets Conduct Act 2013.

4. OBJECTIVE OF THE COMPANY

- 4.1 The primary objective of the Company is to oversee the effective and efficient publication of the Benchmarks, while ensuring all work related to their design, calculation and publication complies with the IOSCO Principles for Financial Benchmarks, European Union Benchmark Regulation and the New Zealand Benchmark Administration licensing regime, overseen by the FMA.

5. SHARES

5.1 Issue of Shares

- (a) At the time of the adoption of this Constitution, the Company has on issue One Hundred Shares to the Shareholder.
- (b) Any further Shares may be issued at any time, to any person, in any number authorised in writing by the Shareholder.
- (c) Shares may be issued (including different classes of Shares) which:
 - (i) rank equally with, or in priority to, the existing Shares; and/or
 - (ii) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise.
- (d) Section 45 of the Act shall not apply.
- (e) Any reissue of Shares or transfer of Shares held by the Company in itself under section 67C of the Act must be authorised in writing by the Shareholder in accordance with clause 5.1(b).

5.2 **Redeemable Shares:** The Company may issue Shares that are redeemable within the meaning of section 68 of the Act.

5.3 **Acquisition of own Shares:** The Company may purchase or otherwise acquire its own Shares in accordance with the Act.

5.4 **Treasury stock:** The Company may hold its own Shares in accordance with the Act.

6. DIRECTORS

6.1 **Number of Directors:** Subject to clause 6.4, the Company must have at least five Directors and a maximum of seven Directors.

6.2 **Board composition:** Subject to clause 6.4, the Board must at all times consist of a majority of Independent Directors.

6.3 **General Manager:** The General Manager/chief executive may not be appointed as a Director.

6.4 **Temporary Board vacancy:** If a resignation or removal of a Director means that clauses 6.1 and 6.2 are temporarily not complied with, the Board is entitled to act for the time it takes to replace the Director.

6.5 **Appointment:** The Directors shall be appointed from time to time:

- (a) if required pursuant to the Company's benchmark administration licence, after the Shareholder has received confirmation from the FMA that it does not object to the appointment; and
- (b) by notice in writing signed by the Shareholder (**Letter of Appointment**).

6.6 **Removal by the Shareholder:** Notwithstanding anything in a Director's Letter of Appointment, a Director can be removed at any time by notice in writing signed by the Shareholder under the following circumstances:

- (a) the Shareholder is instructed by the FMA to remove the Director for any reason;
- (b) the Director is or becomes disqualified from holding the position of director under the Act;
- (c) the Director becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
- (d) the Director fails to disclose an interest pursuant to the Act and fails to comply with the Company's conflicts management plan;
- (e) the Director is found to have engaged in misconduct pursuant to the Company's Complaints Policy or Whistle-blowing Policy; or
- (f) the Director becomes bankrupt or makes an arrangement or compromise with his or her creditors generally.

6.7 **Director leaves office:** A Director ceases to be a Director if he or she:

- (a) resigns by a notice in writing to the Shareholder which details the date from which the resignation shall be effective; or
- (b) has been absent for more than two Board meetings without the permission of the chair and the Board resolves in the second meeting that the Director's office be vacated by reason of that absence.

6.8 **Board proceedings:** The Board shall regulate its own procedure in accordance with Schedule 1, and otherwise it may set its own procedures.

7. MATTERS RESERVED TO THE SHAREHOLDER

7.1 In addition to those matters specified in the Act, the following matters are reserved to the Shareholder, and must be exercised by an ordinary resolution:

- (a) The subscription for, or acquisition of shares in any company;
- (b) The giving of any guarantees or granting of any security over its assets; and
- (c) The borrowing or lending of any money.

8. INDEMNITIES AND INSURANCE

8.1 The Company may enter into all or any of such indemnities and insurances as are referred to in subsections 162(3), (4) and (5) of the Act to the full extent referred to in those subsections.

9. SHAREHOLDER MEETINGS

9.1 **Annual meeting of shareholders:** The Company is not required to call or hold an annual meeting of shareholders pursuant to section 120(5)(c) of the Act.

10. METHOD OF CONTRACTING

10.1 **Deeds:** A deed which is to be entered into by the Company may be signed on behalf of the Company by:

- (a) two or more Directors;
- (b) one or more attorneys appointed by the Company; or
- (c) any two persons authorised by the Board whose signature must be witnessed.

10.2 **Agreements:** Any obligation or contract entered into by the Company, may be signed on behalf of the Company by:

- (a) two or more Directors; or
- (b) any person authorised by the Board.

SCHEDULE 1 – BOARD PROCEEDINGS

1. Notice of meeting

- 1.1 A Director or the Shareholder may convene a meeting of the Board by giving notice in accordance with this clause.
- 1.2 The notice of meeting must be sent to every Director at least five Business Days in advance of a meeting, unless the chair believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting may be given.
- 1.3 The notice of meeting must:
 - (a) be in writing sent to the contact address (either physical or electronic mail address) nominated by the Director; and
 - (b) include the date, time, place of meeting, alternative methods to attend the meeting (in accordance with clause 4.1(b) of this schedule) and an indication of the matters to be discussed at the meeting.
- 1.4 An irregularity in the notice of meeting is waived if all Directors entitled to receive the notice of meeting attend the meeting and do so without protest to the irregularity or if all Directors entitled to receive the notice of meeting agree to the waiver.

2. Chair and deputy chair

- 2.1 The Board shall, in consultation with the Shareholder, appoint a member of the Board as chair and deputy chair of the Board from time to time, by giving notice in writing to the Company and the Shareholder.
- 2.2 The Directors must appoint an Independent Director as chair and deputy chair.

3. Observers

- 3.1 The General Manager may attend a Board meeting as an observer, subject to the approval of the chair.
- 3.2 The Board may permit up to two persons holding positions in relevant public sector entities (such as the FMA, Reserve Bank of New Zealand and government agencies such as the Ministry of Business Innovation and Employment) to attend Board meetings as observers.
- 3.3 The observers shall be entitled to speak at meetings, but not vote.
- 3.4 Any person invited to a Board meeting as an observer will be given a notice of meeting in accordance with clause 1 of this schedule.

4. Method of meeting

- 4.1 A meeting can be held either:
 - (a) by a number of Directors who constitute a quorum being assembled together at the place, date and time specified in the notice of meeting; or

- (b) by a number of Directors who constitute a quorum being present at the date and time specified in the notice of meeting by means of audio, or audio and visual communication by which all Directors participating can simultaneously hear each other throughout the meeting.

5. Quorum

5.1 A quorum for a meeting of the Board is:

- (a) a minimum of four Directors, provided that a majority of Directors present are Independent Directors; or
- (b) if the Board is acting under clause 6.4, a minimum of three quarters of Directors entitled to receive a notice of meeting, provided that a majority of Directors present are Independent Directors.

6. Adjournment

6.1 If a quorum is not present within 30 minutes after the time specified in the notice of meeting, the meeting is adjourned to the future date, time and place that the chair may appoint and notification sent to all Directors in accordance with clause 1 of this schedule.

6.2 A quorum for an adjourned meeting is at least one Independent Director.

7. Voting

7.1 Every Director has one vote.

7.2 The chair will have a casting vote, if required.

8. Resolutions

8.1 A resolution is passed if:

- (a) it is agreed to by all Directors present at a meeting without dissent;
- (b) a majority of the votes cast in a meeting are in favour of it; or
- (c) if a written resolution is signed in accordance with clause 8.3 of this schedule.

8.2 For the purposes of clause 8.1(a) of this schedule, a Director present at a meeting is presumed to have agreed to a resolution unless the Director expressly abstains from voting or votes against a resolution at the meeting.

8.3 A resolution in writing, signed by all of the Directors entitled to receive a notice of meeting:

- (a) is as valid and effective as if it had been passed at a Board meeting duly convened and held;
- (b) may consist of several counterparts in like form each signed by one or more Directors; and
- (c) a copy of any such resolution must be entered into the minute book of Board proceedings.

9. Interested Directors

9.1 Each Director must comply with section 140 of the Act.

- 9.2 A Director who is interested in any matter to be decided by the Board may not, in relation to that matter:
- (a) vote;
 - (b) be included among the Directors present at the meeting for the purposes of the quorum;
 - (c) sign any document implementing the Board's decision; or
 - (d) subject to clause 9.3 of this schedule, do any other thing in his or her capacity as a Director.
- 9.3 Subject to clause 9.2(b) of this schedule, an interested Director may attend a Board meeting where a decision relating to the matter is to be made provided that:
- (a) the chair gives his or her permission; and
 - (b) the interested Director does not speak on the matter.

10. Minutes

- 10.1 The Board must ensure that minutes are kept of all proceedings at meetings of the Board and that a record is kept of written resolutions of the Directors.
- 10.2 Minutes that have been signed correct by the chair of the meeting are prima facie evidence of the proceedings at the meeting.

11. Remuneration

- 11.1 Subject to the approval of the Shareholder, the Board may exercise any power under section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section in respect of Independent Directors.
- 11.2 The Shareholder may remunerate and pay the reasonable expenses of a non-Independent Director in consultation with the Board (in particular, in respect of the budget impact of such payment).