

CONSTITUTION

OF

TAURANGA CITY BASKETBALL ASSOCIATION INC.

Tauranga City Basketball Association, Inc.

Constitution

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Tauranga City Basketball Association, Inc.

Constitution

1. Definitions and interpretation

1.1 **Definitions:** In this Constitution, unless the context requires otherwise, the following words and phrases have the following meanings:

Act means the Incorporated Societies Act 2022, including any amendments, and any regulations made under that Act.

AGM or Annual General Meeting means a meeting of the Members held once a year convened under this Constitution.

Application has the meaning described in clause 4.1.

BBNZ means Basketball New Zealand Incorporated.

Board means TCBA's governing body.

Board Member means a member of the Board, including the Chair.

Bylaws means any bylaws, policies, regulations and codes of TCBA made under clause 15.

Casual Vacancy is a vacancy which arises when a Board Member does not serve their full term of office.

Chair means the Board Member appointed as chair of TCBA under this Constitution.

General Manager has the meaning described in clause 8.

Club means a group of individuals with an interest in basketball that meets the requirement for membership set out in clause 3.

Constitution means this Constitution, including any amendments and any schedules to this Constitution.

Contact Details means a physical or an electronic address and a telephone number.

Diversity, Equity and Inclusion means ensuring fair and equitable opportunities are available to everyone to participate in sport and recreation irrespective of age, ability, ethnicity, gender, national origin, race, religion, sexual orientation, beliefs, or socio-economic status.

General Meeting means an AGM or SGM of TCBA.

Interested has the meaning given in section 62 of the Act.

Matter has the meaning given in section 62(4) of the Act.

Member means each person who for the time being is a member of TCBA and includes all classes of members described in clause 4.3.

National Organisation means BBNZ Incorporated.

Officer means a Board Member and any natural person occupying a position in TCBA that allows the person to exercise significant influence over the management or administration of TCBA.

Ordinary Resolution means a resolution passed by a majority of votes cast.

Purposes means the purposes of TCBA described in clause 3.1.

Region means the geographical area as determined by BBNZ to be the region represented by TCBA and within which the primary base of activities of TCBA is located and is at the date of adoption of this Constitution, the Tauranga City, Western Bay of Plenty, and Eastern Bay of Plenty regions and **Regional** has a corresponding meaning.

SGM or **Special General Meeting** means a meeting of the Members, other than an AGM, called for a specific purpose or purposes.

Special Resolution means a resolution passed by a majority (two-thirds) of votes cast.

Working Day means a day that is not a Saturday, Sunday, a public holiday or a regional holiday in Tauranga between the hours of 9:00am and 5:00pm.

1.2 **Interpretation:** Unless the context otherwise requires:

- (a) Words referring to the singular include the plural and vice versa.
- (b) Clause headings are for reference only.
- (c) Expressions referring to writing include references to words visibly represented, copied, or reproduced, including by email.
- (d) Reference to a person includes any other entity or association recognised by law and vice versa and any reference to a particular entity includes a reference to that entity's successors.
- (e) A reference to any legislation includes any statutory regulations, rules, orders or instruments made or issued pursuant to that legislation and any amendment to, re-enactment of, or replacement of, that legislation.
- (f) All periods of time or notice exclude the days on which they are given.

1.3 **Notices:** Subject to any other notice requirements in this Constitution, any notice or other communication given under this Constitution must be in writing and will be given to:

- (a) a Member if sent to the address set out in their Contact Details;
- (b) TCBA if sent to gm@tauranga.basketball or by post to TCBA's registered office set out on the Register of Incorporated Societies.

1.4 **Receipt of notices:** A notice is deemed to have been received:

- (a) if given by post, when left at the address of that party or five Working Days after being put in the post; or

- (b) if given by email, upon production of a physical copy of the email detailing the time and the date the email was sent (provided that the sender does not receive any "out of office" auto-reply or other indication of non-receipt),

provided that any notice or communication received or deemed received after 5pm on a Working Day, or on a day which is not a Working Day, will be deemed not to have been received until the next Working Day.

2. Details of Tauranga City Basketball Association

- 2.1 **Name:** The name of the society is Tauranga City Basketball Association Incorporated ('TCBA').
- 2.2 **Status:** TCBA is the Regional association for BBNZ and related activities in the Region and is bound by and must observe the rules of BBNZ.
- 2.3 **Registered office:** The registered office of TCBA is at the place the Board decides from time to time.
- 2.4 **Contact person:** At its first meeting following an AGM, the Board must appoint or reappoint at least one, and a maximum of three, persons to be the contact person, subject to those persons meeting the eligibility criteria set out in the Act. The Board must advise the Registrar of Incorporated Societies of any change in the contact person or their Contact Details. The General Manager is to be the primary contact person. Any subsequent changes to the appointed contact person(s) during the term are to be agreed by the board prior to being made.

3. Purpose and powers

- 3.1 **Purpose:** The purposes of TCBA are to:
 - (a) be a member of BBNZ for the Region;
 - (b) lead the promotion, development and administration of Basketball within the Region and to do so in a manner that is consistent with the requirements of BBNZ, mainly as an amateur sport for the well-being, benefit and recreation of the general public;
 - (c) support and assist its Members to deliver Basketball in the Region;
 - (d) promote opportunities and facilities to enable, assist and enhance the participation, enjoyment, and performance in Basketball in the Region;
 - (e) lead, promote and enable Diversity, Equity and Inclusion across the whole organisation including governance of TCBA and participation in Basketball;
 - (f) promote, develop and co-ordinate Basketball competitions in the Region;
 - (g) publish and enforce the rules of Basketball in the Region in a manner consistent with the requirements of BBNZ;
 - (h) protect the integrity of Basketball and TCBA by developing and enforcing standards of conduct, ethical behaviour and implementing good governance in the Region;

- 3.2 **Capacity and powers:** TCBA has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any activity, do any act, or enter into any transaction, subject to this Constitution, the constitution of BBNZ, the Act, any other legislation, and the general law.

4. **Members**

- 4.1 **Application:** An application to become a Member (**Application**) must be in the form required by TCBA. All Applications are decided by the Board, which may accept or decline an Application in its absolute discretion. A person becomes a Member when their Application has been accepted and they have paid the required membership fees and satisfied any other preconditions.
- 4.2 **Member consent:** A person or entity consents to become a Member by participating in TCBA activities in any of the capacities outlined in 4.3 below, unless otherwise specified in this Constitution.
- 4.3 **Members:** The Members of TCBA are:
- (a) Board Members;
 - (b) Life Members
 - (c) Honorary members;
 - (d) All players who are currently playing in a TCBA league or programme;
 - (e) One adult representative from each school with teams participating in a TCBA league;
 - (f) The management team of each TCBA Representative team for each age group grade for the current representative year;
 - (g) Associate members, being any other person aged eighteen (18) and over, or other organisations, who have requested in writing to be members of TCBA and who have paid an affiliation fee as set down by the Board.
- 4.4 **Life Members:** Life Membership may be granted in recognition and appreciation of outstanding service by an individual to TCBA. Any Member may nominate an individual to become a Life Member by giving notice not less than 28 days before the next Annual General Meeting to the Board setting out the grounds for the nomination. The Board must then determine whether the nomination should be forwarded to a General Meeting for determination by the Members. A person may only be elected as a Life Member by a Special Resolution at a General Meeting. A person consents to becoming a Life Member on acceptance of their life membership. Upon election, a Life Member shall be entitled to:
- (a) Complimentary admission to all games and stadia under the jurisdiction of TCBA;
 - (b) Receive notice of; attend and vote at all general meetings of TCBA; and
 - (c) Such other privileges as may be determined by the Board from time-to-time.

Life Membership does not prevent that person from being a board member.

- 4.5 **Honorary Membership:** The Board may from time-to-time award such positions as it shall see fit, having regard to the objects of TCBA, with honorary membership of TCBA such privileges (other than voting rights) as the Board sees fit. Honorary members do not have voting rights.

- 4.6 **Member rights and obligations:** Members acknowledge and agree that:

- (a) they are bound by, and will comply with, this Constitution and the Bylaws, and to the extent they apply, the rules, procedures or policies of BBNZ
- (b) they are subject to the jurisdiction of TCBA;
- (c) they are entitled to all rights and entitlements granted by this Constitution or as determined by the Board;
- (d) to receive, or continue to receive or exercise member rights, they must meet all the member requirements set out in this Constitution and the Bylaws or as otherwise set by the Board, including payment of any membership or other fees within the required time period;
- (e) if they fail to comply with sub-clause (d) the Board may terminate their membership, but the Member continues to be bound by this Constitution;
- (f) they do not have any rights of ownership of, or the automatic right to use, the TCBA's property; and
- (g) they will promote the interests and Purposes of TCBA and must not do anything to bring TCBA into disrepute.

- 4.7 **Suspension of Member:** If a Member is, or may be, in breach under clause 4.6, and the Board believes it is in the best interests of TCBA to do so, the Board may suspend the Member until final determination of the matter under the dispute resolution process applicable to the matter. Before invoking any such suspension, the Member must be given notice of the suspension.

Note, clause 16 Dispute Resolution provides process for disputing a suspension.

- 4.8 **Suspension of Member rights:** Unless otherwise determined by the Board, while a Member is suspended the Member is not entitled to attend, speak or vote at a General Meeting, or to any other rights or entitlements as a Member and is not entitled to continue to hold office in any position within TCBA until such time as the alleged breach is resolved or determined (i.e. their office is suspended until notified otherwise).

- 4.9 **Ceasing to be Member:** A Member ceases to be a Member:

- (a) if an individual on death;
- (b) by giving notice to the Board of their resignation;
- (c) if their membership is terminated under clause 4.6(e);
- (d) if their membership is terminated following a dispute resolution process or such other process set out or referred to in this Constitution.

- (e) if the membership is based on holding a position (e.g. being a player, coach or manager) of a particular team, when they cease holding that position.
- 4.10 **Consequences of ceasing to be a Member:** A Member who ceases to be a Member:
- (a) remains responsible to pay all their outstanding membership and other fees to TCBA;
 - (b) must return all of the TCBA's property if required;
 - (c) ceases to be entitled to any rights of a Member.
- 4.11 **Membership fees:** The Board will decide any membership and other fees payable by Members and the due date for those fees. The Board may determine different levels of membership fees and other fees for different types of Members.
- 4.12 **Member register:** The General Manager will keep an up-to-date Member register, which includes each Member's name, Contact Details, personal information including date of birth, and the date they became a Member. A Member must provide notice to TCBA of any change to their Contact Details. The Member register will be updated as soon as practicable after the General Manager becomes aware of changes of the information recorded in the Member register. TCBA will keep a record of those who have ceased to be a member within the previous 7 years and the date on which they ceased to be a member. The Member Register records will be entered and maintained in the BBNZ Mandated database and up to date information available for BBNZ to access.

5. **General Meetings**

- 5.1 **AGM:** An AGM must be held once a year at the time, date and place as the Board decides, but not more than 6 months after the balance date of TCBA and not more than 15 months after the previous AGM.
- 5.2 **Notice of AGM:** The Members must be given at least twenty-one (21) days written notice of the AGM. Notice to Members of an AGM may be given by posting on TCBA's website.
- 5.3 **Business of AGM:** The following business will be discussed at the AGM:
- (a) Apologies
 - (b) confirmation of the minutes of the previous AGM;
 - (c) the Board's presentation of the following information during the most recently completed accounting period:
 - (i) the annual report;
 - (ii) the annual financial statements;
 - (iii) the auditor's report to members on the financial statements audited by a qualified auditor or the review report of the financial statements;

- (iv) resolution of appointment or non-appointment of auditor, who cannot be a board member;
 - (v) notice of any disclosures of conflicts of interest made by Officers (including a brief summary of the Matters, or types of Matters, to which those disclosures relate);
 - (d) the election of any Board Members;
 - (e) consideration of any motions proposing to amend this Constitution that have been properly submitted for consideration at the AGM;
 - (f) consideration of any other items of business that have been properly submitted for consideration at the AGM.
- 5.4 **Notice of proposed motions:** Members must give notice of any proposed motions and other items of business to the TCBA at least one month before the date of the AGM; and the motion must be seconded by at least one other member. The board retains discretion as to which motion(s) are tabled at any Annual or Special General Meeting.
- 5.5 **Notice of agenda:** Notice of the agenda containing the business to be discussed at the AGM must be sent to all persons entitled to attend the AGM at least twenty-one (21) days before the date of the AGM. No additional items of business can be voted on other than those set out in the agenda, but the Members present may agree unanimously to discuss any other items.
- 5.6 **Calling of SGM:** The Board must call a SGM if it receives a written request stating the purpose of the SGM from the Board itself; or by one-third of the Board Members; or upon receipt of a minimum of fifteen (15) current members.
- 5.7 **Notice of SGM:** Members must be given at least fourteen (14) days' notice of the SGM, unless the Board, in its discretion, decides that the nature of the SGM business is of such urgency that a shorter period of notice is to be given to Members. A SGM may only consider and deal with the business specified in the request for the SGM.
- 5.8 **Method of holding meeting:** A General Meeting may be held by a quorum of people being assembled at the time and place appointed for the meeting, participating by audio link, audio-visual link or other electronic communication or by a combination of those methods.
- 5.9 **Quorum:** No business may occur at any General Meeting unless a quorum is present at the meeting's start time. The quorum for a General Meeting is ten members who are entitled to vote, including Members present by casting votes by electronic means. The quorum must always be present during the General Meeting.
- 5.10 **No quorum at AGM:** If a quorum is not met within 30 minutes of the AGM's scheduled start time, the AGM is adjourned to a day, time and place set by the chair of the AGM. If no quorum is met at the further AGM, the Members present, in person or through audio, audio visual link or other electronic communication, 15 minutes after the further AGM's scheduled start time are deemed to constitute a valid quorum.
- 5.11 **No quorum at SGM:** If a quorum is not met within 30 minutes of the scheduled start time of the SGM, the SGM is cancelled.

- 5.12 **Control of General Meetings:** The Board Chair chairs General Meetings. If that person is unavailable, a Board Member (appointed by the Board) will preside. In the absence of both of those persons, the Members present will elect a person to chair the General Meeting.
- 5.13 **Omissions and irregularities:** The General Meeting and its business will not be invalidated if one or more Members do not receive notice of the meeting. The General Meeting and its business will not be invalidated by an irregularity, error or omission in notices, agendas and papers of the meeting or the giving of notice within the required time frame or the omission to give notice to all Members and any other error in the organisation of the meeting if:
- (a) the chair of the meeting in their discretion determines that it is still appropriate for the meeting to proceed despite the irregularity, error, or omission; and
 - (b) a motion to proceed is put to the meeting and a majority, of two-thirds of votes cast, is obtained in favour of the motion to proceed.
- 5.14 **Attendance:** Members and any other persons invited by the Board are eligible to attend and speak at General Meetings.
- 5.15 **Voting:** The voting entitlement for each Member eligible to vote is as follows:
- (a) Except for votes to alter these rules, every question, matter or resolution shall be decided by a majority of votes of the members present;
 - (b) Every member who is eighteen (18) or over, present and entitled to vote, shall be entitled to a maximum of one vote and in the case of an equality of votes the Chair shall have a second or casting vote;
- Voting may occur via post, proxy or electronic voting.
- 5.16 **Resolution in lieu of General Meeting:** Resolutions in lieu of a General Meeting are not permitted.
- 5.17 **Conduct of voting:** Voting is conducted by voices or a show of hands as determined by the chair of the meeting, unless a secret ballot is called for and approved by the chair or as otherwise required under this Constitution.
- 5.18 **Minutes:** Minutes must be kept of all General Meetings.
- 5.19 **Resolution:** A resolution passed by a simple majority is sufficient to pass a resolution, except as specified in the Act or this Constitution.

6. **Board**

- 6.1 **Functions and powers:** Subject to any modifications, exceptions, or limitations contained in the Act or in this Constitution the Board must manage, direct or supervise the operation and affairs of TCBA and has all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of TCBA.
- 6.2 **Composition:** The Board consists of not less than five (5) and not more than eight (8) members

6.3 Election of Board Members: Board Members are elected as follows:

- (a) the Board must call for nominations for any Elected Board Member positions that are to be vacated at an AGM at least 90 days before the AGM;
- (b) nominations are made in the form decided by the Board and must be received by the date set by the Board and if no date is set, at least 60 days before the AGM;
- (c) late Board nominations may be accepted after this time and at any time up to and including an AGM at the discretion of the Board.
- (d) the Board must give notice of the received nominations to all Members at least 21 days before the AGM;
- (e) at the AGM, if there are more nominees than number of positions available, the election is by secret ballot, unless otherwise decided by the Chair of the General Meeting and approved by a Special Resolution of Members. If a secret ballot is held, two scrutineers must be appointed at the General Meeting to count the votes;
- (f) those nominees who have the highest number of votes in their favour to fit the number of vacant positions are declared elected;
- (g) if the number of votes for one or more nominees is equal to another nominee, a further vote will be held between the tied nominees;
- (h) if there is only one nominee for a vacant position, that person is declared to be elected without the need for a vote.

6.4 Qualification: Every Board Member must, in writing:

- (a) consent to be a Board Member; and
- (b) certify that they are not disqualified from being elected, appointed or holding office as a Board Member by this Constitution.

6.5 Disqualification: The following persons are disqualified from being elected, or holding office as a Board Member

- (a) A person who is an employee of, or independent contractor to TCBA.
- (b) A person who is disqualified from being elected, or holding office as a Board Member under section 47 of the Act.
- (c) A person who has been removed as a Board Member following a process under this Constitution or any Bylaw.

If an existing Board Member becomes or holds any position in (a) or (b) above then upon appointment to such a position, they are deemed to have vacated their office as a Board Member. If any of the circumstances listed in (c) above clause occur to an existing Board Member, they are deemed to have vacated their office upon the relevant authority making an order or finding against them of any of those circumstances.

6.6 Term of office: The term of office for all Board Members is two (2) years, expiring at the end of the relevant AGM. A Board Member may be re-elected to the Board for a

maximum of three (3) consecutive terms of office. The term of any period served to fill a Casual Vacancy is disregarded for the purposes of calculating the total term served.

- 6.7 **Rotation:** The Board is to endeavour to ensure that appropriate rotation of board members occurs in order to allow continuity of governance and appropriate skills and knowledge retention.
- 6.8 **Elected Board Member vacancy:** If a Casual Vacancy of an Elected Board Member arises, the remaining Board Members may:
- (a) appoint a person of their choice to fill the Casual Vacancy until the expiry of the term of the person they replace;
 - (b) appoint a person of their choice to fill the Casual Vacancy only until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy;
 - (c) subject to the minimum composition requirement at 6.2, leave the Casual Vacancy unfilled until the next AGM, at which a person is elected to fill the remainder of the term of the Casual Vacancy.
- 6.9 **Suspension of Board Member:** If any Board Member is or may be the subject of an allegation, notice or charge described in sub-clause 6.5 or any circumstances arise in relation to a Board Member which are or may be of concern to the Board, the remaining Board Members may by Special Resolution suspend the Board Member from the Board and set conditions as it requires pending the final determination of the allegation, notice, charge or circumstances. Before imposing any suspension, the Board Member must be given notice of the suspension.
- 6.10 **Removal of Board Member:**
- (a) The Board may, by majority of two-thirds, remove any Board Member from the Board before the expiry of their term of office if the Board considers the Board Member concerned:
 - (i) has seriously breached duties under this Constitution or the Act; or
 - (ii) is no longer a suitable person to be a Board Member; or
 - (iii) is involved with, interested in, or otherwise closely connected to a person or activity which has or may bring TCBA or Basketball into disrepute or which may be prejudicial to the Purposes or the interests of TCBA and/or Basketball if they remain as a Board Member.
 - (b) The Board Member who is the subject of the motion is counted for the purpose of reaching a quorum but will not participate in the vote on the motion.
 - (c) Before considering a motion for removal, the Board Member affected by the motion must be given:
 - (i) notice that a Board meeting is to be held to discuss the motion to remove the Board Member; and
 - (ii) adequate time to prepare a response; and

- (iii) the opportunity prior to the Board meeting to make written submissions;
and
- (iv) the opportunity to be heard at the Board meeting.

6.11 **Board Member ceasing to hold office:** A person immediately ceases to be a Board Member if:

- (a) their term expires;
- (b) the person resigns by delivering a signed notice of resignation to the Board;
- (c) the person is removed from office under this Constitution;
- (d) the person becomes disqualified from being an officer under section 47(3) of the Act;
- (e) the person dies.

7. **Board meetings**

- 7.1 **Calling meetings:** Board meetings may be called at any time by the Chair or by a majority of Board Members, but generally the Board meets monthly.
- 7.2 **Meeting procedure:** Except to the extent specified in the Act or this Constitution, the Board may regulate its own procedure.
- 7.3 **Quorum:** The quorum for a Board meeting is a majority of the then-elected Board Members. Any Board Member may be counted for the purposes of a quorum, participate in any Board meeting and vote on any proposed resolution at a meeting without being physically present. This may only occur at Board meetings by audio or audio-visual link or other electronic communication provided that all persons participating in the Board meeting can hear each other effectively and simultaneously.
- 7.4 **Chair:** At its first meeting following an AGM, the Board must elect a Chair. The role of the Chair is to chair meetings of the Board. If the Chair is unavailable, another Board Member must be appointed by the Board to undertake the Chair's role during the period of unavailability.
- 7.5 **Voting:** Each Board Member has one vote. Voting is by voices or on request of any Board Member by a show of hands or by a ballot. Proxy and postal votes are not permitted. Voting by electronic means is permitted. If there is an equality of votes, the Chair does not have a casting vote.
- 7.6 **Resolution in writing:** A resolution in writing signed or consented to by email or other electronic means by a majority of Board Members is valid as if it had been passed at a Board meeting. Any resolution may consist of several documents in the same form each signed by one or more Board Members.

8. **Officers' Duties**

An Officer:

- (a) when exercising powers or performing duties as an Officer, must act in good faith and in what the Officer believes to be the best interests of TCBA;
- (b) must exercise a power as an Officer for a proper purpose;
- (c) must not act, or agree to TCBA acting, in a manner that contravenes the Act or this Constitution;
- (d) when exercising powers or performing duties as an Officer, must exercise the care and diligence that a reasonable person with the same responsibilities would exercise in the same circumstances, taking into account, but without limitation the nature of TCBA, the nature of the decision and the position of the Officer and the nature of the responsibilities undertaken by them;
- (e) must not agree to the activities of TCBA being carried on in a manner likely to create a substantial risk of serious loss to TCBA's creditors or cause or allow the activities of TCBA to be carried on in a manner likely to create a substantial risk of serious loss to TCBA's creditors;
- (f) must not agree to TCBA incurring an obligation unless the Officer believes at that time on reasonable grounds that TCBA will be able to perform the obligation when it is required to do so; and
- (g) when exercising powers or performing duties as an Officer, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (i) an employee whom the Officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) any other Officer or subcommittee of Officers on which the Officer did not serve in relation to matters within the Officer's or subcommittee's designated authority,

if the Officer, acts in good faith, makes proper inquiry where the need for inquiry is indicated by the circumstances, and has no knowledge that the reliance is unwarranted.

9. Interests

- 9.1 **Register of interests:** The Board must keep a register of interest disclosures made by Officers.
- 9.2 **Duty to disclose interest:** An Officer who is Interested in a Matter relating to TCBA must disclose details of the nature and extent of the interest (including any monetary value of the interest if it can be quantified) to the Board, as soon as practicable after the officer becomes aware that they are interested in the Matter and include it in the register of interests.
- 9.3 **Interested:** A Board Member is interested in a matter if they:

- (a) may obtain a financial benefit from the matter;
- (b) have a financial interest in, or are a partner, director, Officer, board member or trustee of, a person to whom the matter relates; or
- (c) are a spouse, civil union partner, de facto partner, child, parent, grandparent, grandchild, sibling, niece, nephew, uncle, aunt or first cousin of someone who may obtain a financial interest in the matter.

9.4 **Consequences of being interested:** A Board Member who is Interested in a Matter:

- (a) must not vote or take part in a decision of the Board relating to the Matter, unless all non-interested Board Members consent;
- (b) must not sign any document relating to the entry into a transaction or the initiation of the Matter, unless all non-interested Board Members consent;
- (c) must not take part in any Board discussion relating to the Matter or be present at the time of the Board decision, unless all non-interested Board Members consent;
- (d) may be counted for the purpose of determining whether there is a quorum at any meeting at which the Matter is considered.

9.5 **Calling of SGM:** Despite clause 9.3, if 50% or more Board Members are Interested in a Matter, an SGM must be called to consider and determine the Matter.

9.6 **Notice of failure to comply:** The Board must notify Members of a failure to comply with section 63 or 64 of the Act, and of any transactions affected, as soon as practicable after becoming aware of the failure.

10. Patrons

10.1 A person may be invited by the Board to be a Patron to show their support for TCBA and to help establish or maintain public credibility of TCBA. A Patron is entitled to attend and speak at General Meetings but has no right to vote.

The board may define a policy outlining further detail of the role of a Patron.

11. General Manager

11.1 **Role of General Manager:** A Board may engage a General Manager (GM). The GM is under the direction of the Board and is responsible for the day-to-day management of the affairs of TCBA under this Constitution and the Bylaws and within any delegated authority from the Board. For clarity, the General Manager is considered to be an Officer under the Act (refer clause 8).

11.2 **Board involvement:** The GM may attend Board meetings as and when required by the Board but has no voting rights.

12. **Finances**

- 12.1 **Control and management of finances:** The funds and property of TCBA are controlled, invested and disposed of by the Board, subject to this Constitution; and devoted solely to the promotion of the Purposes.
- 12.2 **Balance date:** TCBA's balance date is 31 December or on the date as the Board decides.
- 12.3 **Audit of financial statements:** TCBA's financial statements must be audited each year and the audited financial statements must be submitted to the AGM. The auditor will be appointed by the Board.
- 12.4 **No personal benefit:** The Officers and Members may not receive any distributions of profit or income from TCBA. This does not prevent Officers or Members:
- (a) receiving reimbursement of actual and reasonable expenses incurred, or
 - (b) entering into any transactions with the organisation for goods or services supplied to or from them, which are at arms' length, relative to what would occur between unrelated parties,
- provided no Officer or Member is allowed to influence any such decision made by TCBA in respect of payments or transactions between it and them, their direct family or any associated entity.
- 12.5 **Financial Investments:** The Board is to maintain appropriate financial policies in regards to reserves and restricted funds to ensure the current and future sustainability of TCBA.
- 12.6 **Acorn Community Fund:** TCBA holds a 'Community Fund' with the Acorn Foundation. The board is to decide a percentage of revenue to be invested into this fund each year with the intention of creating a perpetual financial reserve. Income from this Fund can be allocated at the discretion of the board to support TCBA activities, or reinvested.

13. **Indemnity and insurance**

- 13.1 TCBA indemnifies its current and former Officers, Members and employees as permitted by section 96 of the Act.
- 13.2 With the prior approval of its Board, TCBA may effect insurance for its current and former Officers, Members and employees as permitted by section 97 of the Act.
- 13.3 TCBA is authorised to indemnify an Officer under section 96 of the Act or effect insurance for an Officer under section 97 of the Act for the following matters:
- (a) liability (other than criminal liability) for a failure to comply with a duty under sections 54 to 61 of the Act or any other duty imposed on the Officer in their capacity as an Officer; and
 - (b) costs incurred by the Officer for any claim or proceeding relating to that liability.

- 13.4 TCBA may indemnify any Board member or any other officer of the Society for:
- (a) liability to any person other than the Society for any act or omission in their capacity as an Officer of the Society; or
 - (b) costs incurred by the Officer, member, or employee in defending or settling any claim or proceeding relating to that liability,
- other than where the liability is criminal liability or a breach of the duty to act in good faith or what the Officer believes to be the best interests of the Society.
- 13.5 TCBA may take out and maintain Directors' and Officers' liability insurance cover in respect of the indemnity described in clause 13.4 (for those risks which can be lawfully covered) to an appropriate level approved by the Board in:
- (a) liability (other than criminal liability) for failure to comply with Officers' duties under the Act or any other duty imposed on the Officer in their capacity as an Officer; and
 - (b) costs incurred by the Officer for any claim or proceeding relating to that liability.

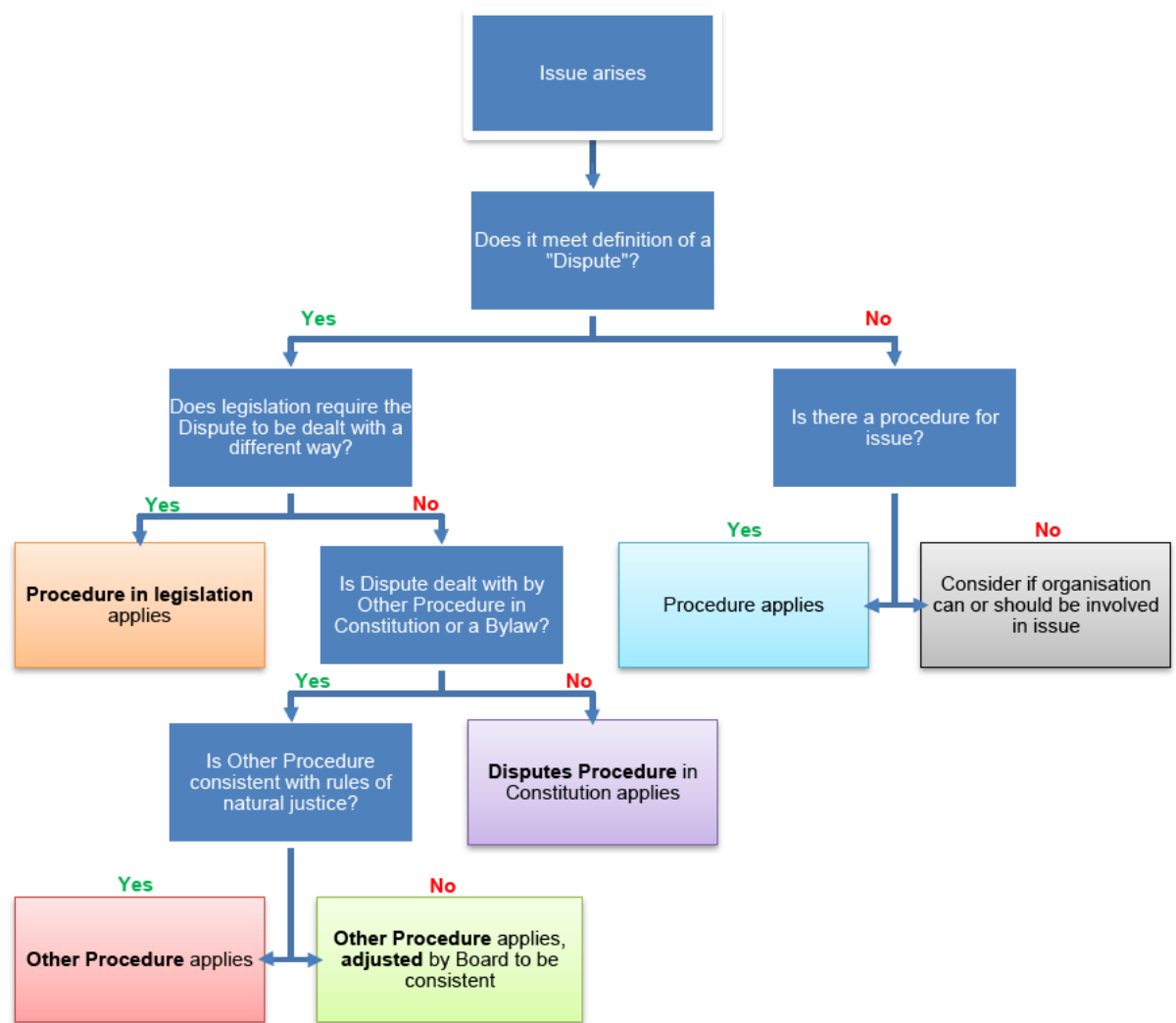
14. **Amendments**

- 14.1 **Amendments:** This Constitution may only be amended or replaced by Special Resolution carried by two-thirds of Members present at a General Meeting who are eligible to vote.
- 14.2 **No alteration:** No addition or alteration to, or rescission of the rules shall be approved if it affects the non-profit aims, objects, personal benefit clause or winding up clause. The provisions and effects of this clause shall not be removed from this document and shall be included or implied in any document replacing this document.
- 14.3 **No amendment:** No addition to, deletion from or alteration of this Constitution may be made which would allow personal pecuniary profits to any individuals.
- 14.4 **Minor effect or technical alteration:** If an amendment to this Constitution would have no more than a minor effect or is to correct errors or makes similar technical alterations, then the Board may give notice of the amendment to every Member stating the text of the amendment and the right of Members to object to the amendment. If the Board does not receive any objections from Members within 20 Working Days after the date on which the notice is sent, or any longer period of time that the Board decides, then the Board may make that amendment. If it does receive an objection, then the Board may not make the amendment.

15. **Bylaws**

The Board may make and amend Bylaws for the conduct and control of TCBA's activities and codes of conduct applicable to Members. Any Bylaw must be consistent with the Purposes, the constitution of BBNZ, the Act and any other laws. All Bylaws are binding on TCBA and the Members. The making, amendment, revocation, or replacement of a Bylaw is not an amendment of this Constitution.

16. Dispute resolution



16.1 Definitions: In this clause 16:

- (a) Dispute means a disagreement or conflict between and among any one or more Members, any one or more Officers and TCBA, that relates to an allegation that:
- (i) a Member or an Officer has engaged in misconduct; or
 - (ii) a Member or an Officer has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (iii) TCBA has breached, or is likely to breach, a duty under this Constitution or the Act; or
 - (iv) a Member's rights or interests as a member have been damaged or Members' rights or interests generally have been damaged;
- (b) **Disputes Procedure** means the procedure for resolving a Dispute set out in the Schedule ;

- (c) **a Member** is a reference to a Member acting in their capacity as a Member (refer 4.3);
 - (d) an **Officer** is a reference to an Officer acting in their capacity as an Officer.
- 16.2 Application of other legislation to a Dispute: The Disputes Procedure will not apply to a Dispute to the extent that other legislation requires the Dispute to be dealt with in a different way. The Disputes Procedure will have no effect to the extent that it contravenes, or is inconsistent with, that legislation.
- 16.3 Application of other procedures under this Constitution or in a Bylaw:
- (a) If the Dispute is dealt with by a separate procedure under this Constitution (e.g. Suspension of members 4.7/4.8; Termination of Board Members 6.9) or in a Bylaw (**Other Procedure**), that Other Procedure applies to the exclusion of the Disputes Procedure. If any part of the Other Procedure is inconsistent with the rules of natural justice, that part will not apply, but the remainder of the Other Procedure will continue to apply together with adjustments as determined by the Board in its discretion so that the Other Procedure is consistent with the rules of natural justice.
 - (b) If the conduct, incident, event or issue does not meet the definition of a Dispute and is managed by any Other Procedure, that Other Procedure applies to the exclusion of the Disputes Procedure.
- 16.4 **Application of the Disputes Procedure:** If the Dispute is not required by other legislation to be dealt with in a different way and it is not dealt with by any Other Procedure, the Disputes Procedure applies to the Dispute.

Disputes Procedure

- 16.5 Raising a complaint:
- (a) A Member or an Officer may start the Disputes Procedure (a Complaint) by giving written notice to the Board setting out:
 - (i) the allegation to which the dispute relates and who the allegation is against; and
 - (ii) any other information reasonably required by TCBA.
 - (b) TCBA may make a Complaint involving an allegation against a Member or an Officer by giving notice to the person concerned setting out the allegation to which the Dispute relates.
 - (c) The information given must be enough to ensure a person against whom the Complaint is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.
- 16.6 TCBA will follow the procedures of natural justice as outlined in Schedule 2 of the Act in relation to complaints. For completeness, this Schedule is included as a Schedule to this document.

17. Liquidation and removal

17.1 **Notice:** The Board must give notice to all Members at least 20 Working Days of a proposed motion:

- (a) to appoint a liquidator;
- (b) to remove TCBA from the Register of Incorporated Societies; or
- (c) for the distribution of TCBA's surplus assets.

The notice must comply with section 228 of the Act and include details of the General Meeting at which the proposed motion is to be considered.

17.2 **Winding up:** The Society may be wound up in accordance with Part 5 of the Act and must:

- (a) call a Special General Meeting for the purpose of resolving the intention to wind up the Society;
- (b) the resolution referred to in 17.2(a) must state the date on which the Society will be dissolved and may direct the method of disposing of the Society's assets and potential recipient organisation(s);
- (c) a second Special General Meeting must be called not less than 30 days after the date of the resolution in being passed to confirm the resolution to dissolve the Society and request the Society be removed from the Register;
- (d) notice of the resolution and its confirmation must be given to the Registrar,
on dissolution, the Society must:
 - (i) discharge its debts and liabilities in full;
 - (ii) distribute its surplus assets as set out below.

17.3 **Special resolution:** Any resolution for a motion set out in clauses 17.1(a) to (c) must be passed by a Special Resolution of Members.

17.4 **Surplus assets:** The surplus assets of TCBA, after the payment of all costs, debts and liabilities, must be disposed of to not-for-profit purpose or purposes sharing similar interests to TCBA.

18. Matters not provided for

If any matter arises that, in the opinion of the Board, is not provided for in this Constitution or any Bylaws, or if any dispute arises out of the interpretation of this Constitution or the Bylaws, the matter or dispute will be determined by the Board.

19. Transition

19.1 **Transition:** This clause 19 applies to facilitate transition of TCBA from the previous constitution to this Constitution. If this clause is inconsistent with any other clause in

this Constitution, this clause applies to the extent of the inconsistency and the other clause will not.

- 19.2 **Power of Board during transition period:** Subject to the Act, the Board may amend any requirement for and/or the date by which this Constitution requires anything to be done. This clause applies for two years and is solely to enable flexibility in the transition of TCBA from the previous constitution to this Constitution and to correct any unintended consequences occurring through different wording being used.

19.3 **Transition of Board Members:**

- (a) All Board Members appointed under the previous constitution remain eligible to complete their elected term.
- (b) the number of terms served under the previous rule/constitution count towards any maximum number of terms in this constitution

20. **Disputes Resolution (Schedule)**

20.1 **How complaint is made**

- (a) A member or an officer may make a complaint by giving to the committee (or a complaints subcommittee) a notice in writing that—
 - (i) states that the member or officer is starting a procedure for resolving a dispute in accordance with the society's 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 society.
- (b) The society may make a complaint involving an allegation against a member or an officer by giving to the member or officer a notice in writing that—
 - (i) states that the society is starting a procedure for resolving a dispute in accordance with the society's constitution; and
 - (ii) sets out the allegation to which the dispute relates.
- (c) The information given under subclause (20.1)(a) or (20.1)(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.
- (d) A complaint may be made in any other reasonable manner permitted by the society's constitution.

20.2 **Person who makes complaint has right to be heard**

- (a) A member or an officer who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.
- (b) If TCBA makes a complaint,—

- (i) TCBA has a right to be heard before the complaint is resolved or any outcome is determined; and
- (ii) an officer may exercise that right on behalf of the society.
- (c) Without limiting the manner in which the member, officer, or TCBA 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 decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iii) an oral hearing (if any) is held before the decision maker; and
 - (iv) the member's, officer's, or TCBA's written statement or submissions (if any) are considered by the decision maker.

20.3 **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, or TCBA (the **respondent**)—
 - (i) has engaged in misconduct; or
 - (ii) has breached, or is likely to breach, a duty under the society's constitution or bylaws or this 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 society, an officer may exercise the right on behalf of the society.
- (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 decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
 - (iv) an oral hearing (if any) is held before the decision maker; and
 - (v) the respondent's written statement or submissions (if any) are considered by the decision maker.

20.4 **Investigating and determining dispute**

- (a) TCBA must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.
- (b) Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

20.5 Society may decide not to proceed further with complaint

- (a) Despite clause [20.4], TCBA may decide not to proceed further with a complaint if—
 - (i) the complaint is trivial; or
 - (ii) the complaint does not appear to disclose or involve any allegation of the following kind:
 - (1) that a member or an officer has engaged in material misconduct:
 - (2) that a member, an officer, or the society has materially breached, or is likely to materially breach, a duty under the society's constitution or bylaws or this Act:
 - (3) that a member's rights or interests or members' rights or interests generally have been materially damaged:
 - (iii) the complaint appears to be without foundation or there is no apparent evidence to support it; or
 - (iv) the person who makes the complaint has an insignificant interest in the matter; or
 - (v) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or
 - (vi) there has been an undue delay in making the complaint.

20.6 TCBA may refer complaint

- (a) TCBA may refer a complaint to—
 - (i) a subcommittee or an external person to investigate and report; or
 - (ii) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.
- (b) TCBA may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

20.7 Decision makers

- (a) A person may not act as a decision maker in relation to a complaint if 2 or more members of the committee or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be—
 - (i) impartial; or
 - (ii) able to consider the matter without a predetermined view.