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NON-SPECIFIC PRIMARY CO-OPERATIVE LIMITED

1. NAME

(a) The name of the Co-operative is **ZERO THREE SIXTY FUND** Primary Co-operative Limited.

(b) The abbreviated name is

2. FORM OF CO-OPERATIVE

This is the constitution of a business undertaking formed as a **Primary** Co-operative with limited liability in terms of the provisions of the Co-operatives Act, 2013 (Act 6 of 2013).

3. DEFINITIONS OR INTERPRETATION OF TERMS

In this constitution, unless the context indicates otherwise, a word or expression to which a meaning is attached in the Co-operatives Act, 2013 (Act 6 of 2013) shall have a similar meaning and -

"Activity plan" means a that summarises the operational and financial objectives of the co-operative for the next financial year, including –

(a) clear business goals with reasons why these goals are believed to be attainable; and

(b) how funds in the co-operative will be utilised.

"Annual report" means a report prepared by the Board containing financial statements, a social report and the management decision report;[1]

"Annual return" annual submission of Form Co-op 08 together with the co-operative's audited report[2] or independently reviewed[2] report or annual report[a] as well as social and management decision reports.

[1]To be submitted by category A primary co-operatives. Annual reports prepared by the boards of directors of category A primary co-operatives must be approved by members at the annual general meeting.

[2]Only applicable to category C primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative.

[2]Only applicable to category B primary co-operatives.

[a]Only applicable to category A primary co-operatives.

“Audited report” means a report by an auditor examining and evaluating the financial statements, social report and management decision report;’

“Board” means the Board of directors elected by the members of the co-operative to manage the affairs of the co-operative

“Co-operative” In addition to the meaning as defined in the Act, it also refers to this co-operative to which this constitution relates;

“Entrance fee” means a once off fee payable to obtain membership of the co-operative, and is paid on application for membership[9] ;

“Financial Statements” means statements approved by the Board for a particular financial period and includes –

(a) Statement of financial position (balance sheet);

(b) Statement of profit or loss & other comprehensive income (an income statement);

(c) A statement of changes in equity;

(d) A statement of cash flows; and

(e) Notes, comprising a summary of accounting policies and other explanatory notes’.

"Gender" a reference in this constitution to the masculine gender shall also include the feminine gender and vice versa;

“Independently reviewed report” means a report by an independent reviewer examining and evaluating the financial statements, social report and management decision report:[8]

“Member” means member of the co-operative by virtue of Clause 7 below

“Member loan” means a loan made by a member to a Co-operative in terms of Clause 9;

“Membership fee or subscription fee” means an annual fee payable towards the running of the co-operative, and may be paid off in equal monthly instalments[a];

’To be submitted by category C primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative.

9The payment of an entrance fee may not be a requirement for all co-operatives, especially for co-operatives that offers shareholding to members.

’Financial statements are prepared by the Board (or persons appointed by the Board) but approved by members at the annual general meeting.

8Required to be submitted by category B primary co-operatives.

[a]Co-operative may recover the running cost for the co-operative from members through annual membership fees or on a ‘user pay’ system.

"Patronage proportion" means the proportion which the value of the transactions conducted by a member with a Co-operative during a specified period bears to the value of the transactions conducted by all the members during the same period with orthrough the Co-operative.

"Registrar" means the Registrar at the Companies and Intellectual Property Commission (CIPC).

"the Act" means the Co-operatives Act, 2013 (Act 6 of 2013);

"User pay" means a system used by the co-operative to recover the running cost of the co-operative based on the number of transactions done by the member or services used by the member.[10]

4. REGISTERED OFFICE AND PLACE OF BUSINESS

(a) The main place of business of the Co-operative is situated at

Physical Address: **1364 NKOSI STREET, SPRUITVIEW GERMI**
JOHANNESBURG
Gauteng
South Africa
1425

(b) The postal, electronic address, telephone and fax numbers of the co-operative are as follows:

Postal Address: **1364 NKOSI STREET, SPRUITVIEW GERMI**
JOHANNESBURG
Gauteng
South Africa
1425

E-mail: **BEN@0360.AFRICA**
Tel.: **0724314828**

(c) Any change of the registered office, place of business, postal address electronic address, and telephone or fax numbers must be submitted to the registrar within fifteen days of such change.

[10] Co-operative may recover the running cost for the co-operative from members through annual membership fees or on a 'user pay' system

5. OBJECTIVES[11]

The objectives of the Co-operative are -

1. **PROMOTE AND ADVANCE SOCIAL AND ECONOMIC WELFARE OF ITS MEMBERS AND SMMES OPERATING IN THE TOWNSHIP ECONOMY ECOSYSTEM ESTABLISH A BUYING GROUP TO NEGOTIATE DISCOUNTS AND FAVORABLE SUPPLY TERMS**
2. **ESTABLISH A BUYING GROUP TO NEGOTIATE DISCOUNTS AND FAVORABLE SUPPLY TERMS WITH MANUFACTURERS INVEST IN AND SUPPORT SMMES TRADING IN TOWNSHIP ECOSYSTEM**
3. **ESTABLISH A BUYING GROUP, INVEST IN AND SUPPORT SMME TRADING IN TOWNSHIP ECOSYSTEM**

6. SERVICES TO MEMBERS AND ANY RESTRICTIONS ON BUSINESS

1. A co - operative must record all business transactions concluded with members and non-members in its annual financial statements.

7. MEMBERSHIP

1. Minimum requirements for membership

1. Any natural person, who is over the age of 18 years or a juristic person may, on application to the Board, become a member of the Co-operative.[12]

2. If the membership of the co-operative is reduced to a number less than the number required for registration, and it remains as such for six months, the co-operative must either be deregistered or converted into another legal entity as required in terms of section 26 of the Act.

2. Application for membership to the co-operative

1. Application for membership and for the number of shares an applicant wishes to take up shall be made on the form provided for that purpose and shall be accompanied by the entrance fee[12].

2. The Board must consider every application for membership and has the right to accept or reject an application.

3. The Board must, within 3 months after receipt of an application for membership, notify the applicant of its decision and, in the event of an application for membership being rejected; any amount paid by the applicant to the Co-operative must be refunded to the member. A person becomes a member of the Co-operative when his application for membership has been accepted by the Board and ratified by the members at the annual general meeting or at the general meeting.

[11]The objectives must be aligned to the needs and requirements of each co-operative as determined by its members

[12]The co-operative may stipulate the requirements for membership in its constitution provided that it not discriminatory, i.e. if the requirements are persons who either "carry out a farming operation or carry out an objective for which the co-operative is formed", these requirements must be applied fairly and without discrimination.

[12]That is if the Co-operative requires the payment of an entrance fee. Co-operatives may prefer the buying of shares rather than entrance fees in which case the constitution should stipulate the minimum payment required in terms of shareholding.

3. Entrance Fee and Membership Fee / Subscription Fee

1. An entrance fee of R100.00 must be paid on application for membership.[1a] Such fee is not refunded on termination of membership.

7.3.2 A membership fee/subscription fee of R100.00 must be paid annually or alternatively in equal monthly instalments. Membership fees are paid towards the cost of running the co-operative and shall not be refunded on termination of membership.[1']

7.4 Rights of members

1. Members have the right to do business with or through the Co-operative.

2. Members that are not suspended or expelled from the co-operative, have the right to attend meetings of the co-operative.

7.4.3 During voting at meetings of members, each member has the right to one vote[1]9.

7.5 Obligations of members

1. Members must adhere to this constitution and any amendments thereto, as well as any other by-laws made by the Board of Directors from time to time.

2. Members must participate in the business of the co-operative.

3. Members must notify the co-operative whenever any of their personal details change, for example when their physical addresses change.

8. SHARES[1']

8.1 Issue of shares and minimum shareholding

1. The shares issued by the Co-operative must all be of the same class, ranking and nominal value.

2. The nominal value of each share must be **R100.00** of which___________% (____________percent) shall be payable in money on application and the balance on such dates and at such times as the board may determine.

[1a]Co-operatives may prefer not to use an entrance fee but rather payment in terms of minimum shareholding.

[1']Co-operatives may prefer to use a “user pay” system to recover the cost for running the co-operative instead of annual membership fees.

[1]9Voting rights stipulated in the constitution must be aligned to the minimum requirements as stipulated in section 3 of the Amendment Act, e.g.in category A and B primary co-operatives members may only have one vote.

[1']The constitution may provide for membership shares to be issued.

8.1.3 When the co-operative is founded each member must have a minimum of …………………………………………… (number of) shares.

8.1.4 From the time that the co-operative is three years in operation, every member shall be bound to hold a minimum number of shares in the co-operative prescribed by a scale which shall be approved by members in general meeting on the recommendation of the board: Provided that the scale must relate to business done by members with the co-operative. Whenever it appears that a member does not hold the number of shares prescribed by the applicable scale, the board may issue to the member without application there-fore such number of shares as will make up the insufficiency and **100%** of nominal value of such shares shall immediately become payable upon such issue: Provided that before such issue of shares is made to any member, he shall be afforded an opportunity, of at least 30 (thirty) days, to acquire the requisite number of additional shares from any other member holding shares in excess of the above scale.

8.2 Certificates of shares and loans

Share certificates and loan certificates shall be issued in such form, as the Board shall determine. These certificates shall state the name of the Co-operative that the Co-operative is subject to the Act, the name of the person to whom it is issued and that the certificate represents membership shares in, or member loans to, the Co-operative and the number of the membership shares or the amount of the member loans.

8.3. Liability in respect of forfeited shares

1. A person whose shares have been forfeited is responsible for immediate payment to the co-operative of the entire amount unpaid on such shares.

2. All moneys paid to the co-operative in respect of forfeited shares must be paid into the general reserve.

3. Notice must be given to the member in whose name the shares were registered prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register of members.

4. Interest on share capital or bonus or any other amount accruing to a member and which is payable by the co-operative to the member, must be applied to pay calls on shares and/or

amounts unpaid on forfeited shares, due but unpaid at the time such interest, bonus or other amount becomes payable to the member concerned.

9. LOANS

9.1 Prohibited and permitted loans and security

1. The co-operative may give financial assistance by means of a loan or the provision of security to-

   (a) any person in the ordinary course of business if the lending of money is part of the ordinary business of the co-operative;

   (b) any person on account of expenditures incurred or to be incurred on behalf of the co-operative;

(c) employees of the co-operative or of any of its members-

(i) to enable or assist them to purchase or erect living accommodation for their own occupation; or

(ii) in accordance with a plan for shares of the co-operative or any of its members to be held by a trustee; and

(d) members, if the financial assistance is available to all members on substantially the same terms.

9.1.2 The co-operative may not give financial assistance in terms of clause 9.1.1 whether directly or indirectly if there are reasonable grounds to believe that-

(a) the co-operative, after giving the financial assistance, will be unable to pay its liabilities as they become due; or

(b) the realisable value of the assets of the co-operative, after giving the financial assistance, will be less than the aggregate of its liabilities, share capital and reserves.

9.1.3 In determining the realisable value of the assets of the co-operative contemplated in sub-clause 9.1.2 [b] above, the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee must be excluded.

9.2 Restrictions relating to unsecured members loans

9.2.1 The co-operative shall not borrow or raise money or overdraw a banking account except on authority of a special resolution:Provided that the co-operative may borrow or raise money or overdraw a banking account without the said authority up to an amount not exceeding one half of the aggregate of its share capital and general reserve.

9.2.2 The board may, if so authorized by members in terms of sub-clause 9.2.1above, in addition to the loans secured by some or all of the assets of the co-operative, the issue of secured debentures and loans obtained from the commercial banks or any other financial institution, further raise loans from members subject to the following conditions:

(i) No loan from any individual member shall amount to less than R1 000 (one thousand rand) and, for the purpose of this paragraph, every successive loan from any particular member shall be regarded as a separate loan;

(ii) No loan shall be repaid within 12 (twelve) months after receipt;

(iii) Interest shall be paid on loans at a rate per annum to be determined by the board from time to time;

(iv) An acknowledgement of debt shall be issued in respect of each loan.

(v) The acknowledgement of debt shall be freely transferable by means of a cession duly registered by the co-operative.

(vi) Receipt of each loan shall be acknowledged by the following acknowledgment of debt, which shall incorporate either of the conditions [ii] or [iii] mentioned below-

*"**ACKNOWLEDGEMENT OF DEBT”***

We, the undersigned, director and secretary of the .... (name of co-operative) hereinafter called the co-operative, hereby acknowledge having received the sum of R………..... (………...……………..Rand) from ….......................... (name) of ..……………………………....... (address) hereinafter called. the owner, subject to the conditions -

[I] lnterest at the rate of ....% (................. percent) per annum or such rate as the board may determine from time to time, shall be payable to the owner on .... or at the date of repayment.

ii. The owner shall not have the right to demand repayment, but the co-operative, after having had the loan for not less than 12 (twelve) months, may repay such loan at any time after having given not less than 30 (thirty) days’ notice of its intention to repay such loan.

OR

iii. The loan shall be repayable on the .... day of .... 20…......(which may not be less than 12 (twelve) months from the date of this acknowledgement of debt) Provided that the board of the co-operative may defer the repayment if the circumstances of the co-operative at the date of repayment of the loan, render such deferment necessary: Provided further that the board of the co-operative shall submit for confirmation to the first succeeding general meeting of members its resolution to defer repayment of a loan and if the resolution of the board is not confirmed by that meeting of the co-operative, the loan shall be repaid within 7 (seven) days of the date of such meeting.

Dated at .... this .... day of .... 20……

______________________	______________________
DlRECTOR	*SECRETARY "*

10. LIMITATION OF LIABILITY

1. Member’s obligation towards the liabilities of the Co-operative by virtue of his or her Membership shall be limited to an amount equal to the nominal value of the shares held by the member in so far as that amount has not been paid up.

10.2 Members are liable for such amounts owed to the co-operative in terms of unpaid fees, shares and loans.

11. ASSOCIATE MEMBERS

1. Non-members who want to or provide support services or who benefit from the co-operative may, upon application and approval by the Board, be appointed as associate members of the co-operative.

2. Associate membership is temporary and is valid for a period not exceeding 12 months. Associate members may, however, at any time apply for full membership.

3. After the period of 12 months, an associate member, subject to the approval by the Board of the co-operative –

   (a) May apply to become a full member of the co-operative; or

   (b) May apply to have his/her associate membership renewed for a further period of 12 months.

4. Associate members may be elected as non-executive Directors.

5. Associate members do not have any voting rights and they do not participate in any annual bonus distributions.

12. TRANSFER OF MEMBERSHIP, MEMBERS LOANS AND SHARES

1. Membership, Member Loans and Shares 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.

2. The Board may at any time refuse to approve and register a proposed transfer.

3. The transfer of any membership shall be in writing in such form and signed in such manner as the Board from time to time may stipulate.

4. When such transfer has taken place the Board shall issue to the transferee a membership card, and/or a Member Loan Certificate and/or a Share Certificate.

13. CONDITIONS AND PROCESSES FOR TERMINATION OF MEMBERSHIP

1. <u>Termination on death</u>

1. The membership of a member who has died may in terms of this clause 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 the event of such transfer not taking place, the membership of the deceased member shall be terminated by resolution of the Board.

2. The shares registered in the name of a member who has died, must be cancelled by resolution of the Board at the request of the executor or liquidator of the estate.

3. The shares registered in the name of a member who has died, must be cancelled by resolution of the Board at the request of the executor or liquidator of the estate.

4. Upon such cancellation the Co-operative must, pay to the executor or liquidator the amount paid up on the nominal value of the shares for payment to the estate of the deceased member.

5. If it is determined that the repayment of the nominal value of a member's paid up shares, all other amounts held to the member's credit, including any member loan and any interest accrued on those amounts up to the date of payment would adversely affect the co-operative's financial well-being, the co-operative may direct that repayment be deferred for a period not exceeding two years after the date of death of a member of the co-operative.

6. Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member or his estate is liable.

2. <u>Termination on change of place of residence</u>

1. The membership of a member who no longer resides in the area served by the Co-operative may on application of the member or by decision of the Board, be terminated by resolution of the Board.

2. Upon such cancellation the Co-operative must refund to the ex-member, the paid up amount of the nominal value of the shares.

3. Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member is liable.

3. <u>Termination when a member is non-active</u>

1. Whenever a member does not actively participate in the activities of the Co-operative for a period of one year[18] or has neglected to notify the Co-operative of any change in his address, whereby the Co-operative is prevented from contacting him, his or her membership may, be terminated by resolution of the Board.

2. The shares of such member may be cancelled by resolution of the Board.

3. Upon such cancellation, the amount paid up on such shares must be transferred to a special account called "Unclaimed Share Moneys". If no claim against this account is received and paid by the Co-operative within 3 (three) years of such transfer, the amount concerned is forfeited to the Co-operative and transferred to the general reserve of the Co-operative: Provided that if the value of the shares, according to the latest completed financial statements of the Co-operative, is less than their nominal value, the amount to be transferred, shall -

[18] The period needs to be determined by the co-operative based on the seasonal nature of its farming operations, e.g. hardwood timber takes about 10 years to grow before it can be harvested.

(a) If the share are fully paid up, be an amount equal to the value so determined; or

(b) If the shares are not fully paid up, be an amount that stands in the same proportion to the amount paid up on the shares, as that which the value so determined of the shares stands to their nominal value.

13.3.4 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member is liable.

14. WITHDRAWAL OF MEMBERSHIP

1. The resignation of a member comes into operation at the first meeting of the Board held after the Co-operative has received the written resignation of the member.

2. The membership of a member, who has resigned, shall be terminated by resolution of the Board.

3. The shares of a member, who has resigned, shall be cancelled by resolution of the Board. The amount paid up on such cancelled shares shall, at the discretion of the Board and provided funds are available, be repaid to the member within a period of two years from the date of cancellation: Provided that if the value of the shares, according to the latest completed financial statements of the Co-operative, is less than their nominal value, the amount payable shall -

   (a) if the shares are fully paid up, be an amount equal to the value so determined; or

   (b) if the shares are not fully paid up, be an amount which stands in the same proportion to the amount paid up on the shares as that which the value so determined of the shares stands to their nominal value.

4. Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member or his estate is liable.

5. Withdrawal of a member from the co-operative does not release the member from any debt or obligation to the co-operative or any contract between the member and the co-operative.

15. CONDITIONS AND PROCESS FOR SUSPENSION AND EXPULSION

1. A member who repeatedly contravenes a provision of this constitution or who refuses to comply with such provision or to meet an obligation imposed on the member by the Act or in terms of this constitution or which he agreed to meet, may:

   (a) by resolution of the Board, be suspended as a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting;

   (b) by special resolution be suspended as a member for a period not longer than 12 (twelve) months from the date on which he is suspended;

   (c) by special resolution be expelled from the co-operative.

15.2 The suspension of a member may be revoked by resolution of the Board at any time.

15.3 Before a member can be suspended or expelled in terms of clause 15.1, he or she has to be given prior written notice of the intention of the Board.

15.4 The notice to such member must contain the following particulars -

(a) the reasons for the proposed suspension or expulsion; and

(b) a time when, and place where the member may appear in person, with or without witnesses, before the Board or to which he may send a written statement signed by the member setting out his objections to the proposed suspension or expulsion.

15.5 The Board must notify the member in writing if it has decided to suspend or expel a member, by specifying the following -

(a) the reasons for the suspension or expulsion;

(b) the date on which his suspension or expulsion comes into effect;

(c) the period of time during which the suspension will apply; and

(d) the disciplinary measures which will be taken.

16. DISCIPLINARY MEASURES

16.1 While under suspension a member forfeits his right to attend general meetings or to vote by proxy.

16.2 The members by special resolution or the Board may furthermore stipulate that certain or all transactions with a member must be suspended for the period of his suspension.

16.3 The membership of an expelled member must be terminated by resolution of the board and upon such termination the member forfeits his membership fees and the amount paid in respect thereof must be credited to the general reserve.

16.4 Any amount payable by the Co-operative to the expelled member shall be set off against any debt for the payment of which the member is liable.

17. GOVERNANCE OF CO-OPERATIVES

17.1 Board of Directors

1. The affairs of the Co-operative must be managed by a Board of Directors consisting of a minimum of **5** and a maximum of **5** Directors. Directors must be elected at the annual general meeting. The Directors must exercise the powers and perform the duties of the Co-operative.

2. The term of office of Directors should not exceed four(4) years[1a].To ensure consistency in the operations of the co-operative the term of office of directors will be arranged in a manner to ensure that the term of office of all directors does not terminate at the same time.

[1a]The Co-operative is to determine a reasonable term of office for directors.

3. In the event of a vacancy the Board may by way of a resolution appoint a director for the remainder of the period referred to in clause 17.1.2 provided that such resolution must be ratified by members at the next general meeting.

4. Associate members may be elected as non-executive directors.

5. Only directors who are full members of the co-operative shall have voting rights.

2. <u>Powers and restrictions on directors</u>

Powers of Directors:

(a) The directors have the power to open a bank account in the name of the co-operative.

(b) Directors have the power to enter into contracts on behalf of the co-operative for the day-to-day running of the business of the co-operative or to delegate such power by resolution to such authority to the senior management of the co-operative.

(c) The directors have the power to suspend by resolution a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting.

(d) The directors have the power to acquire or hire movable or immovable property on behalf of the co-operative.

1. <u>Restrictions on directors:</u>

(a) The directors have the power to overdraw a bank account or to make a loan on behalf of the co-operative, provided that members has agreed to this with a special resolution: Provided further that the directors may borrow or raise money or overdraw a banking account without the said authority up to an amount not exceeding one half of the total of its share capital and general reserve.

(b) The directors shall not provide loans to directors, members or any other person or organisation.

(c) The director shall not make donations on behalf of the co-operative to any person or organisations.

3. <u>Persons not competent to be Director</u>

No person shall hold the office of Director if -

(a) A person is of unsound mind;

(b) A person is an unrehabilitated insolvent;

(c) A person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery, perjury, or any offence involving dishonesty in connection with the formation or management of a Co-operative or other corporate entity.

17.4 <u>Term of office</u>

17.4.1 The term of office of the Directors of the Co-operative shall be the minimum of two (2) years.

2. Retiring Directors are eligible for re-election.

3. The Directors to retire each year shall be those who have been longest in office since their last election at the annual general meeting, but as between members who became Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by ballot.

5. Nomination of Directors and voting for Directors

1. Candidates for the position of Director shall be nominated openly at the annual general meeting held for the purpose electing one or more Directors.

2. Without prejudice to the provisions of sub-clause 17.3 a member, including a retiring Director, qualifies for election as Director only if he is nominated in terms of sub-clause 17.5.1

(a) If the number of candidates nominated does not exceed the number of vacancies on the Board to be filled such candidate or candidates shall be declared elected at the annual general meeting.

(b) If the number of candidates nominated exceeds the number of vacancies on the Board, as many Directors as there are vacancies shall be elected from the nominees at the annual general meeting.

(c) If insufficient or no candidates are nominated to fill the vacancies on the Board, such vacancies shall be regarded as casual vacancies to be filled in accordance with 17.1.3.

3. The method to be followed in electing Directors shall be as determined by the Chairperson of the meeting and agreed by members.

4. At the election of Directors a member shall vote for as many candidates as there are vacancies to be filled on the Board and those candidates receiving the highest number of votes shall be declared elected.

6. Filling of a vacancy on the Board

Any vacancy occurring on the Board during the year shall be filled until the next annual general meeting by a member appointed, by the remaining Directors. At the said annual general meeting a member shall, subject to the provisions of this constitution, be elected to fill the vacancy. Any Director elected at such annual general meeting shall not hold office for a period longer than the unexpired portion of the period of office of the Director whose office became vacant.

7. Conditions for Vacation of office

A Director shall vacate his office -

(a) If he becomes incompetent in terms of clause 17.3 of this constitution to hold the office of Director; or

(b) If the member absents him or herself from more than three consecutive ordinary meetings of the Board without its leave; or

(c) Upon the expiry of 30 (thirty) days, or such shorter period as may be approved by the Board, after he has resigned as a Director of the Co-operative.

8. <u>Conditions and Processes for the appointment of the Chairperson, Vice-Chairperson and Acting Chairperson of the Board</u>

1. At the first meeting of the Board held after the formation meeting and thereafter at the first meeting of the Board held after every annual general meeting of members or when the necessity arises, the Directors shall elect from among themselves a Chairperson and Vice-Chairperson.

2. The Vice-Chairperson shall act as Chairperson whenever last-named is absent or unable to act as Chairperson, and if both the Chairperson and Vice-Chairperson are absent or unable to carry out the functions of the Chairperson, the Board must elect another Director to be Acting-Chairperson during such absence or incapacity.

3. The Chairperson of the Board of the Co-operative shall vacate the office of Chairperson if he -

   (a) Ceases to be a member of the co-operative; or

   (b) Ceases to be a Director of the Co-operative; or

   (c) Resigns as Chairperson; or

   (d) Is relieved of the office of Chairperson by the Board.

4. The provisions of clause 17.8.3 shall <u>*mutatis mutandis*</u> apply to the vice-Chairperson of the Board.

9. <u>Board meetings and Quorum</u>

1. A meeting of the Board must be convened by the Board or the Chairperson of the Board or any two Directors of the Co-operative.

2. The majority of Directors shall constitute a quorum of a meeting of the Board.

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.

17.10 <u>By-laws</u>

The Board has power to make by-laws provided they are not repugnant to this constitution.

11. <u>Delegation of powers and/or functions to a committee, director or manager</u>

1. The Board may delegate one or more of its powers and/or functions to a Director or to a Committee, director or manager appointed by the Board or Manager of the Co-operative.

2. Any Director or 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.

12. <u>Supervisory committee[20]</u>

1. A supervisory committee must be elected at the annual general meeting when the Board is elected.

[20]The establishment and election of a supervisory committee is optional, i.e. not a mandatory requirement but recommended.

2. The supervisory committee must consist of members who are not directors.

3. The supervisory committee is responsible to supervise the Board by representing the interests of members.

18. GENERAL MEETINGS

1. A Co-operative must hold:

(a) Its first annual general meeting within **18** months of registration of the Co-operative;
(b) Subsequently annual general meetings within **6** months after the end of the preceding financial year.

2. The co-operative must circulate its audited report/independently reviewed report/annual report[21] to all members at least fourteen days prior to the date of the annual general meeting.

3. The annual general meeting must:

(a) Appoint an independent reviewer or auditor[22];

(b) Consider and discuss the audited report/independently reviewed report/annual report for the previous financial year against the activity plan of the previous year in order to take resolutions on the future conduct of the business of the co-operative;

(c) Consider and agree the activity plan presented by the Board for the next financial year;

(d) Elect directors; and

(e) Elect a supervisory committee[22].

18.2 <u>Special General Meetings</u>

The Co-operative may from time to time in addition to its annual general meeting hold Special general meetings of its members to dispose of any matter relating to its affairs specifically set out in the notice convening the meeting.

[21]Annual report for category A primary co-operatives, independently reviewed report for category B primary co-operatives and audited report for category c primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative.

[22]Category B primary co-operatives must appoint independent reviewers and category C primary co-operatives, Secondary co-operatives, Tertiary co-operatives and the National Apex co-operative must appoint auditors. See Section 50 of Act. Category A primary co-operatives does not have to appoint an independent reviewer or an auditor. Their annual reports are completed by the Board.

[22]Only if the constitution of the co-operative provides for the election of a supervisory committee supervisory committee.

18.3 Convention of Meetings

1. An annual general meeting shall be convened on authority of the Board.

2. A special general meeting shall be convened -

(a) by the supervisory committee; or
(b) by at least 25 percent of the members of the co-operative;

3. A meeting convened in terms of sub-clause 18.3.2 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 through the hosting of such meeting, in sending notices of the meeting to them and hiring of a venue for the hosting of the meeting if so resolved by such meeting, shall be refunded to the host of the meeting by the Co-operative.

4. The supervisory committee must within 7 days of a meeting hosted in terms of sub-clause 2. inform:

(a) the Tribunal of the outcome of such meeting, and
(b) the Board and the member or members affected or concerned of the meeting's decision and reasons for the decision

18.3.5 If the supervisory committee has not complied with sub-clause 18.3.4 a member of the co-operative may report the matter to the Tribunal for investigation.

18.4 Notice of general meeting

18.4.1 A general meeting shall be convened by at least 14 days notice in writing to each member of the Co-operative.

18.4.2 The notice convening the meeting shall in addition to the time and place of the meeting state the purpose for which it is convened.

18.4.3 A notice may be delivered personally, forwarded by post to the member at his registered address, emailed to registered email address of the member or faxed the registered fax number of the member.

18.4.4 Non-receipt by a member of a notice of a general meeting of the Co-operative does not render such meeting invalid.

18.4.5 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, the email address or 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 unless the member makes an appearance and requests that such notices be sent to his new address.

18.5 Quorums

18.5.1 A quorum for a general meeting shall be constituted -

(a) by at least five members, if the number of members of the Co-operative is not more than fifty;

(b) 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;

(c) 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.

18.5.2 No item of business shall be transacted at any general meeting unless a quorum of members is present during the time when the meeting is considering that item.

18.5.3 If within one hour from the time appointed for the meeting a quorum is not present, the meeting -

(a) if convened by members or in consequence of a petition of members, must be cancelled;

(b) 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.

18.5.4 If the same hall or building 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.

18.5.5 If a quorum is not present within one hour 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.

6. Chairperson of general meetings

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 the convened meeting.

7. Voting by members

1. At all meetings of the co-operative, each member shall have one vote[2a].

2. Any matter for decision by a general meeting shall be decided by means of a vote on a show of hands.

[2a] In Category A and B primary Co-operatives each member shall have one vote. In Category C primary Co-operatives, Secondary Co-operatives, Tertiary Co-operatives and the National Apex Co-operative members may have more than one vote provided that such voting will be limited to the minimum requirements stipulated in section 3 of the Amendment Act. For Secondary co-operatives, tertiary co-operatives and the national apex co-operative, voting must be in proportion to the number of membership held by each member.

3. A vote by ballot shall not be held unless it is demanded by at least five members[2'] present at the meeting who are entitled to vote in a vote by ballot.

4. A vote by ballot must be held in such manner as the Chairperson stipulates. A scrutiniser must be nominated to determine the result of the vote that must be declared by the Chairperson of the meeting as the resolution of the meeting.

5. A declaration by the Chairperson that a resolution has, on a show of hands or by ballot, been carried, or carried out 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, without evidence as to the number or proportion of votes recorded for or against such resolution.

6. If no objection is raised 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 ballot,every vote cast at the meeting that has not been disallowed shall for all purposes be deemed to be valid.

7. In the case of an equality of votes, whether on a show of hands or in a vote by ballot, the Chairperson of the meeting shall have a casting vote in addition to his deliberative vote.

8. 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.

18.8 Special resolutions

A resolution by a general meeting of the Co-operative shall, constitute a special resolution if -

(a) 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;
(b) the resolution has been passed by not less than two thirds of the members present, both in a vote on the show of hands and a vote by ballot; and
(c) the resolution related to the winding-up of the Co-operative and was passed by at least 75 percent of the votes of all the members of the Co-operative, both in a vote on the show of hands and a vote by ballot.

[2'] The number should be determined by the constitution of the co-operative.

9. Proxies

1. A member of the co-operative may appoint another member of the co-operative as a proxy to participate in and vote at a general or special meeting on behalf of the member concerned, provided that the member does not appoint more than one proxy to exercise that member's voting rights;

2. If the co-operative has less than 20 members, a member may only carry one proxy. If the co-operative has more than 20 members, the number of proxies a member may carry may not be more than 5 per cent of the membership of the cooperative.

3. A proxy appointment must be in writing, must clearly set out the details of the vote to be cast on behalf of the member in respect of each decision on the agenda and remains valid for the period expressly set out in the appointment unless it is revoked in writing by the member concerned prior to the meeting;

4. The number of votes by proxy during any general or special meeting may not exceed 25 per-cent of the total membership of the co-operative.

19. FINANCIAL MANAGEMENT

1. Banking account

1. The Co-operative must open a banking account in the name of the Co-operative in which all moneys received shall be deposited as soon as possible after receipt thereof.

2. Cheques drawn on the banking account shall be signed by one of the Directors and must be countersigned by the Secretary of the Board: Provided that a cheque shall not be signed and countersigned by the same person and that all officers who are authorized to sign or countersign cheques must furnish adequate security.

2. Financial year

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

3. Financial records

1. The Co-operative must keep such accounting records as are necessary fairly to 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.

2. The accounting records shall be kept at the registered office of the Co-operative and shall be available at all times for examination by members and Directors for a period of five years after the end of the financial year to which they relate.

4. Annual financial statements

1. An annual report[29], independent reviewed[2'] report or an audited report[28], depending on the category of primary co-operative, of the affairs of the co-operative must be conducted annually in respect of each financial year in order to –

(a) ensure that financial statements are drawn up in conformity with generally accepted accounting practices;

(b) verify that the co-operative has maintained adequate records in accordance with the requirements of this constitution and the Act;

(c) report generally as to whether the assets and facilities of the co-operative are being properly managed and the operations of the co-operative are being conducted in accordance with co-operative principles; and

(d) report on any other matter the auditors are required to report on in terms of the constitution.

19.4.2 The provisions of clause 19.4.1 are applicable to the annual financial statements of the Co-operative and its company subsidiaries.

19.5 Surplus

1. The surplus resulting from the operations of the Co-operative during any financial year shall, on the recommendation of the Board, be applied by resolution of the annual general meeting for that year: Provided that -

(a) A percentage of the surplus, which must not be less than one percent of the co-operative net asset value as reflected in the most recent annual report, independently reviewed report, or audited report, depending on the category of primary co-operative.

(b) The indivisible reserve is indivisible amongst members.

(c) The records on the indivisible reserve must be separately recorded in the financial records of the co-operative.

(d) The indivisible reserve may be only be used for the following:

(i) To sustain the co-operative during periods of financial crises;

(ii) To finance capital expenditure for the co-operative; and

(iii) To finance training and capacity building for the benefit of the members of the co-operative.

(e) The co-operative must report fully on the use of all its reserves in its annual financial statements.

[29] Category A primary co-operatives must submit annual reports.

[2'] Category B primary co-operatives must submit independently reviewed reports.

[28] Category C primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative must submit audited reports.

6. Payment of bonus

1. The method for the allocation of bonuses as well as the actual payment of bonuses must be stipulated in the constitution of the co-operative.

2. Bonuses declared payable to members, does not earn interest from the co-operative.

3. Unclaimed bonuses must be transferred to a Deferred Bonus Payment fund.

4. Any bonus remaining unclaimed for a period of 3 (three) years from the date on which bonus was declared payable may,by resolution of the Board, be declared forfeited and added to the general reserve of the Co-operative.

20. RECORD KEEPING BY CO-OPERATIVE AND ACCESS TO INFORMATION

20.1 The co-operative must keep at its offices the following:

(a) Its constitution, including any amendments thereto.

(b) The minutes of general meetings in a Minute Book.

(c) The minutes of meetings of the board of directors and supervisory committee in a Minute Book.

(d) A list of members or register of members setting out-

(i) the name, identity number (if a natural person) or business registration number (if juristic person) and address of each member.

(ii) the date on which each member became a member.

(iii) if applicable, the date on which a person's membership was terminated and the reason for termination of membership.

(iv) the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans.

(e) A register of directors setting out-

(i) the name, address and identity number of each director, including former directors.

(ii) the date on which such directors became directors of the co-operative.

(iii) the date on which such directors ceased to be directors and the reason why they are no longer directors of the co-operative.

[iv] the name and address of any other co-operative, company or close corporation where both present and former directors are, or were,directors or members.

(f) A register of director's interest in contracts or undertakings.

(g) Information on the nature and value of contributions made by each member to the co-operative.

(h) Adequate accounting records, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.

20.2 The co-operative must retain its accounting and financial statements as records for a period of five years after the financial year to which they relate.

20.3 Members of the co-operative may examine the records referred to in clause 20.1 and 20.2 during normal business hours of the co-operative and may make copies thereof after payment of an agreed fee.

20.4 Subject to the Promotion of Access to Information Act, 2000, the board of directors may, for a reasonable period of time, refuse information relating to any commercial transaction of the co-operative if there are reasonable grounds to believe that the disclosure may be to the disadvantage of the co-operative.

20.5 Where the constitution of a co-operative provides for the establishment of a supervisory committee, the supervisory committee must determine whether the board of directors is entitled to withhold information in terms of clause 20.4

21. AMENDMENT OF CONSTITUTION

The constitution of the Co-operative may be amended at annual general meetings or by special resolution only.

22. LIQUIDATION

In case of liquidation the patronage proportion must be determined for either five years, which preceded the commencement of the winding-up of the Co-operative, or the period for which the Co-operative has existed, whichever period is the shorter.