

# Constitution

Relating to Banking Ombudsman Scheme Limited

# Constitution

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## PART A

**The clauses in this Part A specify details required for the purposes of Part B of this Constitution**

**I. The Company** (clause 1.1 of Part B)

The Company is *BANKING OMBUDSMAN SCHEME LIMITED*.

**II. Number of Directors** (clause 9.1 of Part B)

The number of directors of the Company will be a minimum of 3.

**III. Names of Directors** (clause 9.2 of Part B)

The directors of the Company at the date of adoption of this Constitution are:

Miriam Rose Dean, Chairperson, deemed to be appointed pursuant to clause 9.4.1 for a term expiring on 31 May 2016;

Barbara Joan Chapman, deemed to be appointed pursuant to clause 9.4.2 for a term expiring on 31 March 2017;

Benjamin Conway Russell, deemed to be appointed pursuant to clause 9.4.2 for a term expiring on 31 March 2018;

Mary Holm, deemed to be appointed pursuant to clause 9.4.3 for a term expiring on 31 January 2016;

Suzanne Eleanor Chetwin, deemed to be appointed pursuant to clause 9.4.4.

**IV. Quorum for Directors' Meetings** (clause 10.8 of Part B)

The quorum for a meeting of directors will be 3 directors.

## PART B

### 1. **INTERPRETATION**

#### 1.1 In this Constitution, unless the context otherwise requires, the following terms will have the following meanings:

<i>Act</i>	The Companies Act 1993 as amended from time to time.
<i>Annual Meeting</i>	The meeting of the Shareholder held pursuant to clause <b>6.1</b> .
<i>Banking Ombudsman</i>	The officer appointed under clause 2.1.1.
<i>Board and Board of Directors</i>	In relation to the Company means those directors appointed pursuant to clause <b>9</b> who number not less than the quorum specified in clause <b>IV</b> of Part <b>A</b> of this Constitution acting together as a board of directors, or, if the Company has only one director, that director.
<i>Chairperson</i>	The chairperson of the Company.
<i>Company</i>	The company specified in clause <b>I</b> of Part <b>A</b> of this Constitution.
<i>Non-bank Deposit Taker</i>	As defined in section 5 of the Non-bank Deposit Takers Act 2013.
<i>Financial Services</i>	Has the meaning given to that term in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
<i>Participant</i>	A Registered Bank, or a Deposit Taker, who is for the time being party to the Participation Agreement.
<i>Participation Agreement</i>	The Participation Agreement entered into between the Company and Participants relating to the operation and functions of the Company and the Scheme.
<i>Participation Criteria</i>	The criteria to be met by a Participant, which will be set by the Board from time to time.

<i>Registered Bank</i>	A bank which is registered under the provisions of the Reserve Bank of New Zealand Act 1989.
<i>Secretary</i>	The secretary of the Company appointed pursuant to clause <b>22.1</b> .
<i>Scheme</i>	The Banking Ombudsman Scheme operated by the Company and set out in the Terms of Reference.
<i>Share</i>	The meaning given to that term in clause <b>3.1</b> .
<i>Shareholder</i>	The meaning given to that term in clause <b>3.1</b> .
<i>Terms of Reference</i>	The rules established from time to time by the Company which constitute and govern the powers and duties of the Banking Ombudsman and of the Scheme (and, in particular, the process by which the Scheme may consider complaints).
<i>Working Days</i>	Any day of the week on which banks in Wellington and Auckland are open for business, but not including either a Saturday, a Sunday or a public holiday.

- 1.2 Except as specified in clause **1.1**, words or expressions used in this Constitution which are defined in the Act will have the meaning given by the Act unless the context otherwise requires.
- 1.3 Expressions referring to writing will be construed as including references to printed, typewritten, painted, engraved, lithographed, communicated in any electronic form, or otherwise traced or copied.
- 1.4 This Constitution has no effect to the extent that it contravenes the Act.

## 2. **OBJECTS AND MANAGEMENT OF THE COMPANY**

### ***Objects and Powers***

#### 2.1 The objects of the Company are:

##### 2.1.1 to appoint and support a Banking Ombudsman with power:

- (a) to consider, subject to the Terms of Reference, complaints in connection with the provision of Financial Services by any Participant.

- (b) to facilitate the resolution, settlement or withdrawal of such complaints whether by issuing decisions or by such other means as shall seem expedient.
- (c) to promote and publicise the Scheme and to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices.
- (d) to prevent disputes, including by:
  - working with its participants to establish and maintain a complaints dashboard
  - identifying causes of complaints
  - sharing these insights with banks, the public and regulators.
- (e) to ensure that the Scheme complies with its benchmark principles of accessibility, accountability, effectiveness, efficiency, fairness and independence.

2.1.2 To collaborate with government or other authorities (whether national, local or otherwise) or any corporations, companies or persons on all matters relating to and affecting the business of those financial services referred to in clause **2.1.1** and the settlement of complaints in relation thereto.

2.2 The Company and the Board have full powers, rights and privileges (to the maximum extent permitted by law) to carry on or undertake any business or activity, do any act, or enter into any transaction, to further the objects set out in clause **2.1**, including without limitation the right to levy, charge, collect and receive subscriptions, levies, fees and other payments from Participants and expend the same in furthering all or any of the objects or providing for the expenses of the Company.

2.3 The income and property of the Company, from wherever derived, shall, subject to the Participation Agreement, be applied solely towards the promotion of the objects of the Company as set out in clause **2.1**, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Shareholder or the Participants provided that, subject to clause **10.23** nothing herein shall prevent the payment in good faith of reasonable and proper remuneration and out of pocket expenses to any director or employee of the Company or to any Participant, in return for any services actually rendered to the Company, or for any information or advice supplied, nor prevent the payment of interest on money lent, or payment of a reasonable and proper rent for premises demised or let from any Participant. Nothing in this clause shall prevent the payment of levy rebates to Participants in accordance with the Participation Agreement or any other agreement between the Company and one or more than one Participant.

## ***Management***

- 2.4 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board. The Board will approve the budget of the Company from time to time.
- 2.5 The Board may delegate to a committee of directors, a director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.
- 2.6 The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:
- 2.6.1 Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and
- 2.6.2 Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- 2.7 The Banking Ombudsman is responsible for the day to day administration and conduct of the business of the Banking Ombudsman. He or she can spend money on behalf of the Company, in accordance with the current financial budget approved by the Board.
- 2.8 The Banking Ombudsman cannot exercise any power that is reserved to the Chairperson, the Board or someone else by this Constitution.
- 2.9 In consultation with the Chairperson, the Banking Ombudsman can appoint and dismiss, employees, consultants, independent contractors and agents on behalf of the Company. The Banking Ombudsman can also determine their terms of employment or engagement.

The Banking Ombudsman must attend each meeting of the Board and give the Board any information and assistance it requests (including general information about any complaint), unless the Banking Ombudsman and the Company have agreed otherwise.

## **3. *SHARES***

### ***Rights and Powers Attaching to Shares***

- 3.1 The capital of the Company consists of one fully paid ordinary share (*Share*) which is to be held by the person who for the time being occupies the position of Chairperson (*Shareholder*).

### ***Board to Issue Shares***

- 3.2 The Board does not have the power to issue further shares.

#### **4. TRANSFER OF SHARES**

##### **4.1 Subject to the terms of this Constitution:**

4.1.1 The Share is transferable only to the person who for the time being occupies the position of Chairperson; and

4.1.2 Upon change of person holding the office of Chairperson (other than pursuant to clause **11.3**), the Share must be transferred from the exiting Chairperson to the new Chairperson. The Company may act as agent of the Shareholder for the purpose of signing the necessary share transfer form, and doing all things or signing all other documents necessary or expedient, to give effect to this clause **4.1.2**.

#### **5. DISTRIBUTIONS**

##### ***Distributions***

5.1 The Board will not authorise any distribution or dividend except upon winding up or liquidation of the Company.

#### **6. MEETINGS OF THE SHAREHOLDER**

##### ***Annual Meeting***

6.1 An annual meeting of the Shareholder will be held once in each calendar year; and

6.1.1 Not later than five months after the balance date of the Company; and

6.1.2 Not later than 15 months after the previous annual meeting.

6.2 Representatives of each Participant, together with those other persons entitled to receive notice of Annual Meetings (set out in clause **6.4**), are entitled to attend and speak at all Annual Meetings.

6.3 The Shareholder and Participants shall, at the Annual Meeting, receive the annual report and the operations report referred to in clause **17**, and the financial budget for the Company for the succeeding year.

##### ***Notice of Meetings***

6.4 Written notice of the time and place of a meeting of the Shareholder must be given to the Shareholder and to:

6.4.1 every Participant;

6.4.2 the Chairperson of the New Zealand Bankers' Association;



6.4.3 the Banking Ombudsman;

6.4.4 the Secretary;

6.4.5 every director and an auditor of the Company; and

6.4.6 consumer representatives as identified by the Chairperson,  
not less than 10 working days before the meeting.

### ***Quorum***

6.5 A quorum for a meeting of shareholders is present if the Shareholder is present.

## **7. *DIRECTORS' DUTIES***

7.1 A director of the Company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.

7.2 A director must exercise a power for a proper purpose.

7.3 A director of the Company must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution.

7.4 A director of the Company must not:

7.4.1 Agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or

7.4.2 Cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors.

7.5 A director of the Company must not agree to the Company incurring an obligation unless the director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.

7.6 A director of the Company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:

7.6.1 The nature of the Company; and

7.6.2 The nature of the decision; and

7.6.3 The position of the director and the nature of the responsibilities undertaken by him or her.

### ***Reliance on Information and Advice***

- 7.7 Subject to clause 7.8, a director of the Company, when exercising powers or performing duties as a director, 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:
- 7.7.1 An employee of the Company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
  - 7.7.2 A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; or
  - 7.7.3 Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- 7.8 Clause 7.7 applies to a director only if the director:
- 7.8.1 Acts in good faith; and
  - 7.8.2 Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
  - 7.8.3 Has no knowledge that such reliance is unwarranted.

### **8. *SELF INTEREST TRANSACTIONS***

- 8.1 A director of the Company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board:
- 8.1.1 If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
  - 8.1.2 If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- 8.2 A general notice entered in the interests register or disclosed to the Board to effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 8.3 A transaction entered into by the Company in which a director of the Company is interested may be avoided by the Company at any time before the expiration of three months after the transaction is disclosed to

the Shareholder (whether by means of the Company's annual report or otherwise).

- 8.4 A transaction cannot be avoided if the Company receives fair value under it.
- 8.5 Nothing in clauses **8.1** to **8.4** applies in relation to:
  - 8.5.1 Remuneration or any other benefit given to a director in accordance with clauses **12.1** and **12.2**; or
  - 8.5.2 An indemnity or any other benefit given to a director in accordance with clauses **13.1** to **12.6**.
- 8.6 If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in clauses **8.1** to **8.4** will apply in relation to that transaction.
- 8.7 Subject to the Act, the Shareholder may, by ordinary resolution, ratify or approve any act or omission of a director or the Board.

#### ***Actions by Interested Directors***

- 8.8 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:
  - 8.8.1 Vote on a matter relating to the transaction; and
  - 8.8.2 Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
  - 8.8.3 Sign a document relating to the transaction on behalf of the Company; and
  - 8.8.4 Do any other thing in his or her capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

#### ***Use of Company Information***

- 8.9 A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
  - 8.9.1 For the purposes of the Company; or
  - 8.9.2 As required by law; or
  - 8.9.3 In accordance with clauses **8.10** or **8.11** of this Constitution; or

8.9.4 In complying with clause **8.1** of this Constitution.

### ***Disclosure***

- 8.10 A director of the Company may, unless prohibited by the Board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties.

### ***Disclosure & Use of Information Generally***

- 8.11 A director of the Company may disclose, make use of, or act on the information if the disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

## **9. APPOINTMENT AND REMOVAL OF DIRECTORS**

### ***Minimum Number***

- 9.1 The number of directors will be not less than the minimum number specified in clause **II** of Part A of this Constitution.

### ***Appointment***

- 9.2 A person named as a director in clause **III** of Part **A** of this Constitution holds office as a director from the date of adoption of this Constitution until that person ceases to hold office as a director in accordance with the Act or this Constitution.
- 9.3 A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.
- 9.4 The Board shall comprise:
- 9.4.1 A Chairperson, appointed in accordance with clause **10.1**;
  - 9.4.2 Two representatives of Participants, appointed by the Council of the New Zealand Bankers' Association;
  - 9.4.3 One person appointed by the Crown by and through the Minister responsible for the administration of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or, if there is no such portfolio, such other Minister of the Crown as the Chairperson may consider appropriate; and

- 9.4.4 One other person who shall ordinarily be the Executive Director for the time being of Consumer NZ or such other person representative of customers as the Chairperson may consider appropriate following prior consultation with the Board, who in either case shall be appointed by the Chairperson acting in his or her capacity as Shareholder.
- 9.5 Directors shall be appointed for such term as specified by those persons entitled to appoint them, or if no such term is specified, indefinitely. In any event, the persons entitled to appoint each director may remove or replace that director by notice to the Company at any time. Directors may be re-appointed (by the person or body that appointed them) at the expiry of any period of office. Each of the directors named in clause III of Part A is deemed to be appointed for the term specified in that clause for that director.

#### ***Vacation of Office***

- 9.6 The office of director of the Company is vacated if:
- 9.6.1 The term of a director's appointment expires; or
- 9.6.2 the person holding that office:
- (a) Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or
  - (b) Is removed from office in accordance with clause 9.5; or
  - (c) Becomes disqualified from being a director pursuant to section 151 of the Act; or
  - (d) Dies.

#### ***Appointment of Directors by Board***

- 9.7 Where a director ceases to hold office by virtue of the vacation of office pursuant to clause 9.6 the continuing directors will, failing appointment of a new director to that director's position by the party entitled to appoint that director within a period of one month following such vacation, have power at any time thereafter to appoint any other qualified person to hold office as a director in such director's place until such time as the party entitled to appoint that director appoints a director, at which time the director appointed by the Board shall immediately cease to be a director.

## 10. ***DIRECTORS' MEETINGS***

### ***Chairperson***

- 10.1 The Board shall appoint one person as a director and as Chairperson.
- 10.2 The Company shall use its best endeavours to ensure that no person is appointed as the Chairperson who has a material interest which may conflict with his or her duties as Chairperson.
- 10.3 When a Board meeting is held and the Chairperson is not present within ten minutes from the time appointed for the meeting, the directors present must elect one of their number to be chairperson of the meeting.

### ***Notice of Meeting***

- 10.4 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this clause **10.4** and clauses **10.5** and **10.6**.
- 10.5 Not less than 2 Working Days' written notice of a meeting of the Board must be given either by hand, pre-paid post, telegram cable, telex, fax, or email to every director and to the Secretary. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 10.6 An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors agree to the waiver.

### ***Methods of Holding Meetings***

- 10.7 A meeting of the Board may be held either:
  - 10.7.1 By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - 10.7.2 By the contemporaneous linking together by telephone or other means of communication of the directors constituting a quorum, whether or not any one or more of the directors are absent from New Zealand and such meeting will be deemed to be properly held provided the following conditions are met:
    - (a) All the directors entitled to receive notice of a meeting of the directors will have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;
    - (b) Each of the directors taking part in the meeting by telephone or other means of communication must

throughout the meeting be able to hear each of the other directors taking part;

- (c) At the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part;
- (d) A director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a director will be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

### ***Quorum***

- 10.8 A quorum for a meeting of the Board will be that number of directors specified in clause **IV** of Part A of this Constitution, provided there is present at any such meeting a person appointed pursuant to clause **9.4.2** and a person appointed pursuant to either clause **9.4.3** or clause **9.4.4**.
- 10.9 No business may be transacted at a meeting of the Board if a quorum is not present.
- 10.10 If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting will then stand adjourned for five working days. The quorum for an adjourned meeting of the Board will then be those present.

### ***Voting***

- 10.11 Every director has one vote.
- 10.12 The Chairperson will have a casting vote.
- 10.13 Subject to clauses **10.15** and **10.16**; a resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 10.14 A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly abstains from voting or dissents from or votes against the resolution at the meeting.
- 10.15 The Company must not engage in any of the following activities or determine any of the following matters without the passing of a resolution of the Board approved by a majority of 75% of the directors:
  - 10.15.1 Admission of any party as a Participant under the Participation Agreement;

10.15.2 Alteration, addition to, rescission or replacement of the Participation Agreement, the Participation Criteria, and/or the Terms of Reference.

- 10.16 The Board may, by passing a resolution approved by a majority of 75% of the directors, make recommendations to the Shareholder to amend or replace this Constitution.

### ***Minutes***

- 10.17 The Board must ensure that minutes are kept of all proceedings at meetings of the Board, including names of directors in attendance.
- 10.18 The minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

### ***Resolution***

- 10.19 A resolution in writing, signed or assented to by letter, telegram, cable, telex, email, facsimile or other written form by all directors, then entitled to receive notice of a Board Meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 10.20 A resolution pursuant to clause **10.19** may consist of several documents (including facsimile, email or other similar means of communication) in like form each signed or assented to by one or more directors.
- 10.21 A copy of any such resolution must be entered in the minute book of Board proceedings.

### ***Acts of Directors***

- 10.22 All acts done at a Board meeting or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or to act as a director, or that a person so appointed was not qualified, is valid as if a person had been duly appointed and was qualified to be a director.
- 10.23 A director may not hold any other office of profit under the Company nor, either personally or by his or her firm, act in a professional capacity for the Company.



### ***Other Proceedings***

- 10.24 Except as provided in this Constitution, the Board may regulate its own procedure.

### **11. REMUNERATION AND OTHER BENEFITS**

- 11.1 The Board may authorise the payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity, or the entering into of a contract to such effect, if the Board is satisfied that to do so is fair to the Company.

- 11.2 If a payment or benefit is authorised under clause **11.1**:

11.2.1 The Board must ensure that particulars of that action are forthwith entered in the interests register; and

11.2.2 Directors who vote in favour of that action must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.

- 11.3 The directors (without the prior consent of the Shareholder) will be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendances at Board meetings and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company.

### **12. INDEMNITY AND INSURANCE**

- 12.1 Except as provided in clauses **12.2** to **12.6**, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a related company in respect of:

12.1.1 Liability for any act or omission in his or her capacity as a director or employee; or

12.1.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

- 12.2 The Company will indemnify a director or employee of the Company or a related company for any costs incurred by him or her in any proceeding:

12.2.1 That relates to liability for any act or omission in his or her capacity as a director or employee; and

12.2.2 In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued;

- 12.3 The Company will indemnify a director or employee of the Company or a related company in respect of:

12.3.1 Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; or

12.3.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability;

not being criminal liability, or liability in respect of a breach, in the case of a director, of the duty specified in clause 7.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Company or related company.

12.4 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of:

12.4.1 Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or

12.4.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

12.4.3 Costs incurred by that director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.

12.5 The directors who vote in favour of authorising the effecting of insurance under clause 12.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

12.6 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a related company are forthwith entered in the interests register.

12.7 For the purposes of this clause 12, the definitions in section 162(9) of the Act apply.

### 13. **METHOD OF CONTRACTING**

13.1 A contract or other enforceable obligation may be entered into by the Company as follows:

13.1.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

(a) Two or more directors of the Company; or

- (b) If there is only one director, by that director whose signature must be witnessed; or
- (c) A director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or
- (d) One or more attorneys appointed by the Company in accordance with section 181 of the Act;

13.1.2 An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority;

13.1.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

#### 14. **AUDITOR**

14.1 The Company must, at each Annual Meeting, appoint an auditor to:

14.1.1 Hold office from the conclusion of the meeting until the conclusion of the next Annual Meeting; and

14.1.2 Audit the financial statements of the Company for the accounting period next after the meeting.

14.2 Notwithstanding clause **14.1**, the Company need not appoint an auditor if, at or before the meeting, the Shareholder unanimously resolves that no auditor be appointed. Such a resolution will cease to have effect at the commencement of the next Annual Meeting.

14.3 The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

#### 15. **ALTERATION OF CONSTITUTION**

15.1 Subject to the Act, this Constitution may be altered or replaced at any time by Special Resolution. The Board may from time to time, pursuant to clause **10.16**, make recommendations to the Shareholder to amend or replace the Constitution.

15.2 An application to change the name of the Company specified in clause **I** of Part **A** of this Constitution is not an amendment of this Constitution for the purposes of this Constitution or the Act, and may be made by a director with the approval of the Board.

16. **ACCOUNTS**

16.1 The Board must, subject to section 10 of the Financial Reporting Act 1993, ensure that, within three months after the balance date of the Company, financial statements that comply with the Financial Reporting Act 1993 are:

16.1.1 Completed in relation to the Company and that balance date; and

16.1.2 Dated and signed on behalf of the directors by two directors of the Company, or, if the Company has only one director, by that director.

17. **ANNUAL REPORT**

17.1 The Board must, within three months after the balance date of the Company, prepare an annual report on the affairs of the Company during the accounting period ending on that date.

17.2 The Board must cause a copy of the annual report to be sent to the Shareholder (unless the Shareholder has elected not to receive the annual report under section 212 of the Act) and to each Participant, not less than ten working days before the date fixed for holding the Annual Meeting.

17.3 Every annual report for the Company must be in writing and be dated and, subject to section 211(2) of the Act, must contain the reports, financial statements and information required by section 211(1) of the Act.

17.4 In addition, the Board will table a report describing the operation of the Banking Ombudsman scheme in the previous Financial Year, and otherwise summarising the Company's activities (*operations report*), at the Annual Meeting for consideration by the Shareholder and the Participants.

18. **MANNER OF SERVICE ON SHAREHOLDER AND CREDITORS**

18.1 A notice, statement, report, accounts, or other document to be sent to the Shareholder or a creditor who is a natural person may be:

18.1.1 Delivered to that person; or

18.1.2 Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or

18.1.3 Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.

18.2 A notice, statement, report, accounts, or other document to be sent to a creditor that is a company or an overseas company may be sent by any

of the methods of serving documents referred to in section 388 or section 390, as the case may be, of the Act.

- 18.3 A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:

18.3.1 Delivered to a person who is a principal officer of the body corporate; or

18.3.2 Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or

18.3.3 Delivered in such manner as the Court directs; or

18.3.4 Delivered in accordance with an agreement made with the body corporate; or

18.3.5 Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or

18.3.6 Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

## 19. ***REMOVAL FROM THE REGISTER***

- 19.1 The Shareholder, or the Board, or any person or persons authorised by the Board, may, subject to section 318 of the Act, request the removal of the Company from the Register on the ground that:

19.1.1 The Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or

19.1.2 The Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation.

## 20. ***REGISTERED OFFICE AND ADDRESS FOR SERVICE***

- 20.1 Subject to the Act, the Board may change the registered office of the Company at any time.

- 20.2 Subject to the Act, the Board may change the address for service of the Company at any time.

21. **SHARE REGISTER**

- 21.1 The Board may divide the share register into two or more registers, which may be kept in different places.

22. **SECRETARY**

***Appointment of Secretary***

- 22.1 The Company shall appoint the Banking Ombudsman or one of the other employees of the Company to act as Secretary to the Company on such terms, at such a remuneration and upon such conditions as it thinks fit.

***Suspension and Removal of Secretary***

- 22.2 The Company shall have the power to suspend or remove the Secretary.

***Powers and Duties of Secretary***

- 22.3 The Company may vest in the Secretary such powers, duties and authorities as it may from time to time determine and the Secretary must accept all such powers and authorities subject at all time to the control of the Company.

***Secretary to Attend Meetings***

- 22.4 The Secretary is entitled to attend all annual and other meetings of the Board and the Shareholder and may be heard on any matter.

Certified as the Constitution of BANKING OMBUDSMAN LIMITED adopted by board resolution dated 24 June 2020.

Miriam Rose Dean CNZM QC  
Chair