

NZFBF

NEW ZEALAND
FINANCIAL BENCHMARK
FACILITY



TE POU HERENGA PŪTEA O AOTEAROA

Constitution

September 2023

NEW ZEALAND FINANCIAL BENCHMARK FACILITY

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1. CHANGE CONTROL

Date	Author	Update
July 2020	Simon Jensen	Draft document for review
April 2021	John Groom	Final
November 2021	Various	NZFBF Board review
March 2022	Jenni Walsh	Nov 21 version renamed March 2022 following NZFMA Board resolution
May 2023	Zofia Wisniewski	Draft update for review
September 2023	Zofia Wisniewski	Final – approved by NZFMA Board resolution

2. DEFINITIONS

Act means the Companies Act 1993.

Benchmark means any financial benchmark to be administered by the Company as agreed from time to time with the Shareholder.

Board means the Board of Directors of the Company.

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

Chair means the Chair of the Board or the Chair of the IOC (as relevant).

Company means New Zealand Financial Benchmark Facility Limited.

Contributor means a person whose activities have previously resulted in information or data being provided or made available to the Company for the generation or operation of the Benchmarks (regardless of whether the information or data is provided or made available directly or indirectly to the Company).

Deputy Chair means the Deputy Chair of the Board or the Deputy Chair of the IOC (as relevant).

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

FMA means the Financial Markets Authority.

FMCA means the Financial Markets Conduct Act 2013.

Independent Director is a Director that:

- (a) is not an officer or director of the Shareholder;

- (b) is not employed, and has not been previously employed, in any capacity by the Company, the Shareholder, or by a member of the Shareholder, or by a Contributor, or by a User, unless there has been a period of two years between ceasing such employment and their appointment to the Board;
- (c) is not a current consultant or adviser to the Company or Shareholder, or in relation to material matters, to a member of the Shareholder;
- (d) is not a director of any related company or of any service providers to the Company, or the Shareholder;
- (e) has not served on the Board for a period exceeding 12 years; and
- (f) does not have control or significant influence over the Company (other than in their capacity as a Director);

Independent Member of the Independent Oversight Committee (IOC) is a member that:

- (a) does not have control or significant influence over the Company or the IOC (other than in their capacity as a member of the IOC);
- (b) is not an officer or Director of the Company;
- (c) is not an officer or director of the Shareholder;
- (d) is not employed, and has not been previously employed, in any capacity by the Company, the Shareholder, or by a member of the Shareholder, or by a Contributor, or by a User, unless there has been a period of two years between ceasing such employment and their appointment to the IOC;
- (e) is not a current consultant or adviser to the Company or Shareholder, or in relation to material matters, to a member of the Shareholder;
- (f) is not a director of any related company, or of any service providers to the Company or the Shareholder; and
- (g) has not served on the IOC for a period exceeding 12 years.

Licence means a market services licence for the service of acting as administrator of a financial benchmark under the FMCA.

Regulations means the Financial Markets Conduct Regulations 2014.

Shareholder means the New Zealand Financial Markets Association Incorporated.

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

Specified Financial Benchmark means a financial benchmark that is specified, or to be specified, in any Licence granted to the Company.

User means a person whose activities currently require, the use of a Benchmark produced by the Company, where “use of a Benchmark” means:

- (a) issuance of a financial instrument which references a Benchmark;
- (b) determination of the amount payable under a financial instrument or a financial contract by referencing a Benchmark; or
- (c) being a party to a financial contract which references a Benchmark.

3. CAPACITY AND POWERS OF THE COMPANY

3.1 The Company has the capacity, rights, powers and privileges set out in the Act except to the extent that they are modified by this Constitution.

4. PURPOSE AND OBJECTIVE OF THE COMPANY

4.1 **Purpose of the Company:** The purpose of the Company is to provide independent financial benchmark administration services exclusively for the Shareholder.

4.2 **Objective of the Company:** The objective of the Company is to deliver effective and efficient calculation and publication of the Benchmarks, ensuring, to the extent applicable, compliance with the New Zealand administrators of financial benchmarks regime, as provided for in the FMCA and the Regulations, and alignment with the IOSCO Principles for Financial Benchmarks.

5. SHARES

5.1 Issue of Shares:

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

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

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

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

6. DIRECTORS

6.1 **Number of Directors:** Subject to clauses 6.2 and 6.3, the Company must have at least three Directors and a maximum of five Directors.

6.2 **Board Composition:**

- (a) Subject to clause 6.3, the Board must consist of a majority of Independent Directors.
- (b) If, due to an Independent Director no longer qualifying as an Independent Director, clause 6.2(a) is unable to be complied with, the Board is entitled to act for a period of no longer than 6 months from the date on which the Independent Director ceased to qualify as an Independent Director, after which time clause 6.2(a) must be able to be met, by
 - (i) the relevant Director having regained his or her status as an Independent Director, or
 - (ii) the relevant Director resigning, or
 - (iii) another current Director's status changing from non-Independent to Independent Director, or
 - (iv) the appointment of sufficient additional Independent Directors.
- (c) The General Manager/Chief Executive of the Company may not be appointed as a Director.

6.3 **Temporary Board Vacancy:** If clause 6.1 is temporarily not complied with, due to a resignation by a Director, or removal of a Director by the Shareholder under clause 6.6, or removal of a Director by the Board under clause 6.7(b), the Board is entitled to act for the time it takes the Shareholder to replace the Director.

6.4 **Appointment by the Shareholder:** The Directors shall be appointed by the Shareholder from time to time:

- (a) in accordance with the provisions of the FMCA requiring, for the purposes of the Company holding a Licence, the Directors to be fit and proper persons to hold the position of Director; and
- (b) by notice in writing signed by the Shareholder (letter of appointment).

6.5 **Licence Requirements:** If the FMA imposes conditions on any Licence granted to the Company regarding the requirement of the Directors to be fit and proper persons, such as to ensure that those requirements continue to be satisfied and require verification that the requirements continue to be satisfied, there shall be no appointment of a Director until the Company has received confirmation from the FMA that the conditions (if any) are satisfied, and the Shareholder has been notified.

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

- (a) the Director is no longer a fit and proper person to hold the position of Director or satisfy the requirements that are prescribed by the Regulations (if any) for the Company's Licence (if granted);
- (b) the Shareholder is instructed by the FMA to remove the Director for any reason;
- (c) the Director is, or becomes, disqualified from holding the position of director under the Act;
- (d) the Director dies or becomes mentally disordered or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
- (e) the Director fails to disclose an interest pursuant to the Act and/or fails to comply with the Company's "Guide to Managing Conflicts of Interest" provided in Appendix 1 of the "NZFBF Code of Conduct and Conflicts of Interest Policy";
- (f) the Director is found to have engaged in misconduct pursuant to the Company's "Complaints Process Policy" or "Whistle-blowing Process Policy"; or
- (g) the Director becomes bankrupt or makes an arrangement or compromise with his or her creditors generally.

6.7 **Director Leaves Office:** A Director ceases to be a Director if he or she:

- (a) resigns by a notice in writing to the Shareholder which details the date from which the resignation shall be effective; or
- (b) has been absent for more than two Board meetings, within any 12 month period, without the permission of the Chair, and the Board resolves in the third meeting of the Director being absent without permission that the Director's office be vacated by reason of that absence.

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

7. MATTERS RESERVED TO THE SHAREHOLDER

7.1 In addition to those matters reserved to the Shareholder specified in the Act, the following matters are reserved to the Shareholder:

- (a) the subscription for, or acquisition of, shares in any company;
- (b) the giving of any guarantees or granting of any security over the Company's assets; and
- (c) the borrowing or lending of any money (excluding any lending consisting of a deposit into an account or a term deposit with a registered bank, borrowing via registered bank credit card and excluding funding arrangements with the Shareholder and related party loans from the Shareholder).

8. INDEPENDENT OVERSIGHT COMMITTEE (IOC)

8.1 **Requirement for an IOC:** An IOC is required by the Regulations in order for the Company to be eligible for a Licence.

- 8.2 **Responsibilities of the IOC:** Prior to the Company applying for a Licence, the Shareholder will establish an IOC with the responsibilities as specified in the Regulations, and maintain the IOC while the Company holds a Licence.
- 8.3 **Number of IOC Members:** Membership of the IOC will comprise of at least three members and a maximum of five.
- 8.4 **IOC Chair:**
- (a) The Chair of the IOC must be, at all times, an Independent Member of the IOC.
 - (b) If the Chair of the IOC loses their status as an Independent Member of the IOC, the member will cease to act in the position as Chair and the IOC will not meet until the Shareholder has appointed a new replacement Chair that is an Independent Member of the IOC, or the member regains their status as an Independent Member of the IOC.
- 8.5 **Sufficiently Independent:** As specified in the Regulations, the IOC must be sufficiently independent of the Company, which means the composition of members of the IOC must:
- (a) adequately balance member representation of Users and Contributors of the Specified Financial Benchmark(s); and
 - (b) provide a counterbalance to any relevant conflicts of interest that may arise in relation to the generation or operation of the Specified Financial Benchmark(s).
- 8.6 **General Manager:** The General Manager/Chief Executive of the Company may not be appointed as a member of the IOC.
- 8.7 **Temporary IOC Vacancy:** If, due to a resignation or removal of a member of the IOC, clauses 8.3 and 8.5 are temporarily not complied with, the IOC will not meet until the Shareholder has appointed a new member replacement.
- 8.8 **Appointment by the Shareholder:** The members of the IOC are to be appointed by the Shareholder.
- 8.9 **Removal by the Shareholder:** Notwithstanding the appointment of an IOC member or anything in an IOC member's letter of appointment, an IOC member can be removed at any time by notice in writing signed by the Shareholder under any of the following circumstances:
- (a) the IOC member remaining as a member would result in the composition of members of the IOC not being sufficiently independent as required in clause 8.5;
 - (b) the IOC member dies or becomes mentally disordered or becomes subject to an order under the Protection of Personal and Property Rights Act 1988;
 - (c) the IOC member fails to disclose an interest pursuant to the Act and/or fails to comply with the Company's "Guide to Managing Conflicts of Interest" provided in Appendix 1 of the "NZFBF Code of Conduct and Conflicts of Interest Policy";

- (d) the IOC member is found to have engaged in misconduct pursuant to the Company's "Complaints Process Policy" or "Whistle-blowing Process Policy"; or
- (e) the IOC member becomes bankrupt or makes an arrangement or compromise with his or her creditors generally.

8.10 **IOC Member Leaves Office:** An IOC member ceases to be a member if he or she:

- (a) resigns by a notice in writing to the Shareholder which details the date from which the resignation shall be effective; or
- (b) has been absent for more than two IOC meetings, within any 12 month period, without the permission of the IOC Chair, or the IOC Deputy Chair if the absence pertains to the IOC Chair, and the IOC resolves in the third meeting of the member being absent without permission that the member's position be vacated by reason of that absence.

8.11 **IOC Proceedings:** The IOC shall regulate its own procedures in accordance with Schedule 2, and otherwise it may set its own procedures.

9. REQUIREMENTS OF THE COMPANY IN RELATION TO THE IOC

9.1 The Board must ensure that the Company:

- (a) provides the IOC with full, and timely, access to any Company documents, records, systems and resources that are reasonably required by the IOC to meet its responsibilities as specified in the Regulations;
- (b) provides the IOC with an opportunity to provide comment, and to make recommendations, on any matter within the IOC's responsibilities as specified in the Regulations ;
- (c) has regard to each recommendation of the IOC; and
- (d) notifies the IOC in writing of:
 - (i) what steps have been, or will be, taken in response to the recommendation; or
 - (ii) if the Board declines to adopt the recommendation, its reasons for doing so.

9.2 The Company must permit the IOC to notify the FMA, if the Company has not already done so, if it knows or suspects that, in connection with a Licence service:

- (a) the Company has contravened, may have contravened, or is likely to contravene a Licence obligation; or
- (b) a Contributor has contravened, may have contravened, or is likely to contravene an obligation imposed by or under the FMCA.

10. INDEMNITIES AND INSURANCE

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

11. SHAREHOLDER MEETINGS

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

12. METHODS OF CONTRACTING

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

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

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

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

SCHEDULE 1 – BOARD PROCEEDINGS

1. Meetings of the Board

- 1.1 The Board will meet at least twice annually.
- 1.2 A Director or the Shareholder may convene a meeting of the Board by giving notice in accordance with this clause.
- 1.3 The notice of meeting must be sent to every Director at least five Business Days in advance of a meeting, unless the Chair or Shareholder believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting may be given.
- 1.4 The notice of meeting must:
 - (a) be in writing and sent to the contact email address provided by the Director; and
 - (b) include the date, time, indication of the matters to be discussed at the meeting, place of meeting, and alternative method(s) to attend the meeting as provided for in clause 4.1(b) of this Schedule 1.
- 1.5 An irregularity in the notice of meeting is waived if all Directors entitled to receive the notice of meeting attend the meeting and do so without protest to the irregularity or if all Directors entitled to receive the notice of meeting agree to the waiver.
- 1.6 The agenda for the meetings will be prepared by the Board Chair before the meeting and distributed to the Directors one week before the relevant meeting, except a shorter period will be considered appropriate in cases of urgent meetings called. Minutes will be approved and kept of all meetings.
- 1.7 Secretariat services for the Board will be provided by the Company.

2. Board Chair and Deputy Chair

- 2.1 The Board shall, with approval from the Shareholder, appoint a member of the Board as Chair and Deputy Chair of the Board from time to time, and give notice in writing to the Company and the Shareholder of such appointment(s).
- 2.2 The Board must appoint an Independent Director as Chair and an Independent Director as Deputy Chair.

3. General Manager

- 3.1 The General Manager of the Company will be given a notice of the Board meeting in accordance with clauses 1.3 and 1.4 of this Schedule 1 and may attend the Board meetings and is entitled to speak at meetings, but not vote.

4. Method of meeting

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

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

5. Quorum

5.1 A quorum for a meeting of the Board is:

- (a) a minimum of two Directors.

6. Adjournment

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

7. Voting

7.1 Every Director has one vote.

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

8. Resolutions

8.1 A resolution is passed if:

- (a) it is agreed to by all Directors present at a meeting without dissent; or
- (b) a majority of the votes cast in a meeting are in favour of it; or
- (c) a written resolution is signed in accordance with clause 8.3 of this Schedule 1.

8.2 For the purposes of clause 8.1(a) of this Schedule 1, a Director present at a meeting is deemed to have agreed to a resolution unless the Director expressly abstains from voting or expressly votes against a resolution at the meeting.

8.3 A resolution in writing, signed or assented to by all of the Directors:

- (a) is as valid and effective as if it had been passed at a Board meeting duly convened and held; and
- (b) may consist of several counterparts in like form each signed or assented to by one or more Directors,

and a copy of any such resolution must be minuted by the Board and kept in accordance with clause 11.1 of this Schedule 1.

9. Conflicts of Interest

9.1 All Directors are responsible for declaring any potential, perceived or real conflicts of interest, whether pecuniary or non-pecuniary. In all cases where a conflict of interest exists, or may be reasonably perceived to exist, the “Guide to Managing Conflicts of Interest” provided in Appendix 1 of the “NZFBF Code of Conduct and Conflicts of Interest Policy” will apply as appropriate.

10. Interested Directors

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

10.2 Subject to clause 10.1 of this Schedule 1 and the “Guide to Managing Conflicts of Interest” provided in Appendix 1 of the “NZFBF Code of Conduct and Conflicts of Interest Policy”, a Director who is interested in any transaction entered into, or to be entered into, by the Company may:

- (a) vote on a matter relating to the transaction if the Chair does not require the recusal of the Director;
- (b) 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 purpose of a quorum;
- (c) sign any document relating to the transaction on behalf of the Company; and
- (d) 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.

11. Minutes

11.1 The Board must ensure that minutes signed by the Chair are kept of all Board meetings and that a record is kept of written resolutions of the Directors for a period of at least 7 years.

11.2 Copies of signed minutes and written resolutions must be provided to the IOC.

11.3 Minutes that have been signed are prima facie evidence of the proceedings at the Board meeting.

12. Remuneration

12.1 Subject to the written approval of the Shareholder, the Board may exercise any power under section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section in respect of Directors.

SCHEDULE 2 – IOC PROCEEDINGS

1. Meetings of the IOC

- 1.1 The IOC will meet at least twice annually.
- 1.2 The IOC Chair, or any member of the IOC, may convene a meeting by giving notice in accordance with this clause.
- 1.3 The notice of meeting must be sent to every IOC member at least five business days in advance of a meeting, unless the IOC Chair believes it is necessary to convene a meeting as a matter of urgency, in which case shorter notice of the meeting may be given.
- 1.4 The notice of meeting must
 - (a) be in writing and sent to the contact email address provided by the member; and
 - (b) include the date, time, indication of matters to be discussed at the meeting, place of meeting, and alternative method(s) to attend the meeting, as provided for in clause 4.1(b) of this Schedule 2.
- 1.5 An irregularity in the notice of meeting is waived if all members entitled to receive the notice of meeting attend the meeting and do so without protest to the irregularity or if all members entitled to receive the notice of meeting agree to the waiver.
- 1.6 The agenda for the meetings will be prepared by the IOC Chair before the meeting and distributed to the members one week before the relevant meeting, except a shorter period will be considered appropriate in cases of urgent meetings called. Minutes will be approved and kept of all meetings.
- 1.7 Secretariat services for the IOC will be provided by the Shareholder.

2. IOC Chair and Deputy Chair

- 2.1 The Shareholder will appoint an Independent member of the IOC as the IOC Chair, and appoint a member of the IOC as Deputy Chair, by giving notice in writing to the Company and the IOC.

3. General Manager

- 3.1 The General Manager of the Company will be given a notice of the IOC meeting in accordance with clauses 1.3 and 1.4 of this Schedule 2 and may attend the IOC meetings by express invitation only, and, if attends, is entitled to speak at meetings but not vote.

4. Method of meeting

- 4.1 A meeting can be held either:
 - (a) by a number of IOC members who constitute a quorum being assembled together at the place, date and time specified in the notice of meeting; or
 - (b) by a number of IOC members who constitute a quorum being present at the date and time specified in the notice of meeting by means of audio, or audio and visual communication by

which all IOC members participating can simultaneously hear each other throughout the meeting.

5. Quorum

- 5.1 A quorum for a meeting of the IOC meeting is not less than one half (50%) of IOC members, provided that the IOC members present satisfy the requirements for being sufficiently independent as required by the Regulations.

6. Adjournment

- 6.1 If a quorum is not present within 30 minutes after the time specified in the notice of meeting, the meeting is adjourned to the future date, time and place that the Chair may appoint, with notification sent to all IOC members in accordance with clause 1 of this Schedule 2.

7. Voting

- 7.1 Every IOC member has one vote.
- 7.2 The IOC Chair will have a casting vote, if required.

8. Resolutions

- 8.1 A resolution is passed if:
- (a) it is agreed to by all IOC members present at a meeting without dissent; or
 - (b) a majority of the votes cast in a meeting are in favour of it; or
 - (c) a written resolution is signed in accordance with clause 8.3 of this Schedule 2.
- 8.2 For the purposes of clause 8.1(a) of this Schedule 2, an IOC member present at a meeting is deemed to have agreed to a resolution unless the IOC member expressly abstains from voting or expressly votes against a resolution at the meeting.
- 8.3 A resolution in writing, signed or assented to by all of the IOC members entitled to receive a notice of meeting:
- (a) is as valid and effective as if it had been passed at an IOC meeting duly convened and held; and
 - (b) may consist of several counterparts in like form each signed or assented to by one or more IOC members,
- and a copy of any such resolution must be minuted by the IOC and kept in accordance with clause 10.1 of this Schedule 2.

9. Conflicts of Interest

- 9.1 All IOC members are responsible for declaring any potential, perceived or real conflicts of interest, whether pecuniary or non-pecuniary. In all cases where a conflict of interest exists, or may be reasonably perceived to exist, the "Guide to Managing Conflicts of Interest" provided in Appendix 1 of the "NZFBF Code of Conduct and Conflicts of Interest Policy" will apply as appropriate.

10. Minutes

10.1 The IOC must ensure that minutes signed by the Chair are kept of all IOC meetings and that a record is kept of written resolutions of the IOC members for a period of at least 7 years.

10.2 Minutes that have been signed are prima facie evidence of the proceedings at the IOC meeting.

11. Remuneration

11.1 The Shareholder will determine the level of remuneration paid to IOC members by the Company.