

## **MODEL CONSTITUTION FOR A HOUSING PRIMARY CO-OPERATIVE**

### **Note:**

1. Primary co-operative means a co-operative whose object is to provide employment or services to its members and facilitate community development, formed by a minimum of:
  - (a) five natural persons; OR
  - (b) two juristic persons; OR
  - (c) a combination of any five persons, whether natural or juristic
2. A primary co-operative may join a secondary co-operative.

### **Note: In case of a secondary co-operative**

1. The constitution of a secondary co-operative must stipulate that it is a secondary co-operative.
2. A secondary co-operative means a co-operative formed by two or more operational primary co-operatives to provide sectoral services to its members, and may include juristic persons.
3. 'Operational' means a co-operative that has held its annual general meeting and has submitted its annual report, audited report or independently reviewed report as applicable, to the registrar in its last financial year.
4. A secondary co-operative may join a tertiary co-operative.
5. An operational secondary co-operative may only join the national apex co-operative where there is no sectoral or multi-sectoral tertiary co-operative that can represent the secondary co-operative.
6. Secondary co-operatives must annually submit audited reports to the registrar.
7. The constitution of a secondary may provide that members have more than one vote provided that it complies with the minimum requirements stipulated in section 3(3) of the Act.
8. The main objectives of a secondary co-operative must include the provision of sectoral services to primary co-operatives that are its members.
9. The number of votes a member has must be in proportion to the number of primary co-operatives that are its members.
10. The Constitution of a secondary co-operative may provide for the further objectives which may include any activity that is not inconsistent with the objectives of any of its primary co-operative members, and which is undertaken for the exclusive benefit of the members.

### **Note: In case of a tertiary co-operative**

1. The constitution of a secondary co-operative must stipulate that it is a secondary co-operative.
2. A tertiary co-operative means a sectoral or multi-sectoral co-operative whose members are secondary co-operatives and whose objectives are to advocate and engage organs of state, the private sector and stakeholders on behalf of its members, in line with its sectoral or geographical mandate.
3. A tertiary co-operative is formed by a minimum of two or more operational secondary co-operatives.
4. 'Operational' means a co-operative that has held its annual general meeting and has submitted its annual report, audited report or independently reviewed report as applicable, to the registrar in its last financial year.
5. Tertiary co-operatives may join the national apex co-operative.
6. Tertiary co-operatives must submit audited reports to the registrar.
7. The constitution of a tertiary co-operative may provide that members have more than one vote provided that it complies with the minimum requirements stipulated in section 3(3) of the Act.
8. The main objective of a tertiary co-operative must include advocating and engaging organs of state, the private sector and stakeholders on behalf of its members that are secondary co-operatives.
9. The number of votes a member has must be in proportion to the number of secondary co-operatives that are its members.
10. The Constitution of a tertiary co-operative may provide for the further objectives which may include any activity that is not inconsistent with the objectives of any of its secondary co-operative members, and which is undertaken for their exclusive benefit.
11. The further objectives of a tertiary co-operative which may include representing the interest of co-operatives within a sector or region, providing assistance for education and training, establishing a guarantee fund to facilitate external financing of its members, and the establishment of an audit fund to assist members to have their operations audited.

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**HOUSING PRIMARY CO-OPERATIVE LIMITED**

**1. NAME**

- (a) The name of the Co-operative is .....  
.....Housing Primary Co-operative Limited.
- (b) The abbreviated name is ..... Housing Co-op Ltd

**2. FORM OF CO-OPERATIVE**

This is the constitution of a business undertaking formed as a **Housing 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 -

**“Application”** means an application for membership in the form approved by The board of the housing management co-operative;

**“Audited report”** means a report by an auditor examining and evaluating the financial statements, social report and management decision report;<sup>1</sup>

**“Annual report”** means a report prepared by the Board containing financial statements, a social report and the management decision report;<sup>2</sup>

**“Building and Financing proposal”** means a proposal prepared by the housing management co-operative with details of the housing project

**"common spaces"** means spaces which can be used communally by the community

**“Financial Statement”** means statements drafted by the Board for a particular financial period and includes –  
Statement of financial position (balance sheet);  
(a) An income statement;  
(b) A statement of changes in membership;  
(c) A statement of cash flows; and  
(d) Notes, comprising a summary of accounting policies and other explanatory notes;

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

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

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<sup>1</sup>To be submitted by category C primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative.

<sup>2</sup> To be submitted by category A primary co-operatives.

<b>“Entrance fee”</b>	means a once off fee payable to obtain membership of the co-operative, and is paid on application for membership;
<b>“Enhanced People’s Housing Process</b>	Enhanced People's Housing Process (EHP) is a process where beneficiaries are actively involved in the decision making over the housing process, product and make a contribution towards the building of their own homes.
<b>“Housing Management Co-operatives”</b>	are registered by two or more operational primary co-operatives to manage independent housing co-operatives which may not have the required management capacity, may also be referred to as Secondary Housing Co-operatives.
<b>"Gender"</b>	a reference in this constitution to the masculine gender shall also include the feminine gender and <u>vice versa</u> ;
<b>“Independently reviewed report”</b>	means a report by an independent reviewer examining and evaluating the financial statements, social report and management decision report: <sup>3</sup> ;
<b>“Member”</b>	means member of the co-operative by virtue of clause 7 of this constitution.
<b>“Membership fee or subscription fee”</b>	means an annual fee payable towards the running of the co-operative, and may be paid off in equal monthly instalments;
<b>“Member loan”</b>	means a loan made by a member to a Co-operative in terms of the membership agreement as referred to in Clause 9 of this constitution.
<b>“Registrar”</b>	means the Commissioner at the Companies and Intellectual Property Commission (CIPC)
<b>“housing co-operative”</b>	means a primary co-operative which provides housing to its members, or a secondary Co-operative that provides technical sectoral services to primary housing co-operatives;
<b>“house rules”</b>	means the house rules with which members of the housing co-operative must comply and which may be amended by the board;
<b>"house"</b>	means a house constructed or to be constructed on a personal space;
<b>“member’s contribution”</b>	means an amount paid by a member to the housing co-operative which amount shall only be repayable to the member to the extent that a new incoming member identified by the housing co-operative and approved by the board, in accordance with the savings principle, shall be prepared to buy the membership papers for an amount not less than the aggregate of the share amount and such payment;
<b>"personal space"</b>	means the serviced erf, in respect of which the member has the rights of use, occupation, enjoyment and such other rights as set out herein;
<b>“project”</b>	means the project for which the housing co-operative has been established;
<b>“savings principle”</b>	means the principle in terms of which members have to make savings with a savings and credit co-operative associated with the housing co-operative

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<sup>3</sup> Required to be submitted by category B primary co-operatives.

according to agreed targets in accordance with rules adopted by special resolution by the housing management co-operative and which decides the member's place in the queue to qualify for a house; or any substituting Act;

**"User charges"** means charges which a member must pay to the housing co-operative on a monthly basis as set out in clause 7.7 below;

#### **4. REGISTERED OFFICE AND PLACE OF BUSINESS**

- (a) The main place of business of the Co-operative is situated at .....  
.....(Physical Address),  
..... District. ....Province.
- (b) The postal, electronic address, telephone and fax numbers of the co-operative are as follows:  
Postal Address:.....  
.....  
E-mail: .....  
Tel.: ..... Fax number: .....
- (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.

#### **5. OBJECTIVES**

The objective of the housing co-operative is to provide housing for its members, develop, hold and maintain immovable property and to make such houses available for use by its members or to sell such houses to its members in accordance with the co-operative principles.

#### **6. SERVICES TO MEMBERS AND ANY RESTRICTIONS ON BUSINESS**

- 6.1 The description of business and any restrictions thereto are outlined clause 5 above.
- 6.2 The co-operative only concludes transactions with persons who are members of this co-operative OR the co-operative concludes transactions with both persons who are members of this co-operative and persons who are not members of this co-operative. [If the co-operative does business with both members and non-members, it must record its transactions in its annual financial statements as required in terms of clause 19.3 of this constitution
- 6.3
  - (1) The housing co-operative is established after a building and financing proposal by the housing management co-operative has been made.
  - (2) The building and financing proposal sets out details of the project, the various issues, relating to the construction or upgrading of immovable property comprising houses and the financing thereof, the relevant time frames and funding commitments, any member's contribution required to finance the project, the proposed monthly charges or installments pertaining to the houses, drawings, descriptions and specifications of the houses, cost estimates, and an operating budget from which the housing co-operative shall not be able to change their plans substantially without the consent of the members of the housing co-operative.
  - (3) The housing co-operative may also be a member of the secondary housing co-

- operative and the members of the primary co-operative must comply with the obligations imposed by the Constitution of the secondary housing co-operative.
- (4) The housing co-operative once registered must enter into a management contract with the secondary housing co-operative regarding the financial and administrative management of the housing co-operative which may only be terminated by special resolution in terms of clause 18.8
  - (5) If the housing co-operative is established prior to the completion of construction or upgrading of the respective project the secondary housing co-operative must -
    - (a) Inform members regularly of progress in the project;
    - (b) Not require the payment of any member's contribution before written confirmation by the auditors that the financing commitments set out in the building and financing plan are in place, unless held in trust with an attorney or auditor.<sup>4</sup>
  - (6) The member who has paid a membership fee is entitled to a certificate issued by the co-operative if the constitution of the co-operative makes provision for certificate.
  - (7) Where building work has not started within one (1) year of payment of the member's contribution to the housing co-operative, the member may withdraw his/her application.
  - (8) If changes are made to the building and financing proposal, not required for technical or financial reasons or ordered by public authority, which has the effect that any member's contribution needs to be increased by more than ten percent (10%) or if the standard of the house is significantly lowered, a member who has not approved the change may cancel or withdraw the application. If changes are made that have those results and a member who was not informed in advance, can cancel the agreement irrespective of whether the change was necessary or ordered. A member's right to cancel or withdraw the application according to this clause falls away if he or she has not exercised such right within three (3) months of learning of the circumstances.
  - (9) If an application is cancelled or withdrawn as contemplated in clause 6.3 Sub-section 8, the housing co-operative must repay any member's contribution, and redeem the share against payment of an amount calculated in accordance with section 8 of this Constitution.
  - (10) A member may, while he or she is unable to occupy the house, sub-let the house to the housing co-operative, which may sub-let the house for an agreed period. The house may only be leased to other persons with consent of the board on such terms and conditions as may be decided by the board.

## **7. MEMBERSHIP**

### **7.1 Minimum requirements for membership**

- 7.1.1 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 Housing Co-operative.
- 7.1.2 A member of a housing Co-operative is a person who has a share in the Housing Co-operative.
- 7.1.1 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 6 of the Act.

### **7.2 Application for membership to the co-operative**

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<sup>4</sup> Compliance difficult but essential

- 7.2.1 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.
- 7.2.2 The Board must consider every application for membership and has the right to accept or reject an application.
- 7.2.3 The Board must, within 1 month 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 him.
- 7.2.4 A person becomes a member of the Co-operative when his application for membership has been accepted by the Board, and a share is issued or transferred to the applicant.
- 7.2.5 The Board may also reject an application due to the following:  
The board must consider every application for membership and has the right to accept an application or reject an application on the basis that -
  - (a) somebody else has a better right to be allocated a house because of the savings principle;
  - (b) where the proposed member is not qualifying for a housing subsidy and it is a subsidized project;
  - (c) the proposed member is not able to pay the price decided by the board in respect of membership papers as set out in clause 18 (1) or cannot pay the required monthly charges; or
  - (d) The proposed member is not a member of the housing management co-operative or the affiliated savings and credit co-operative.

7.3 **Entrance Fee and Membership Fee / Subscription Fee**

- 7.3.1 An Entrance Fee of R.....-00 must be paid on application for membership. Such fee is not refunded on termination of membership.
- 7.3.2 A Membership Fee / Subscription fee of R.....-00 must be paid annually: Provided that a member may pay off the subscription fee in equal monthly instalments. Such fee shall not be refunded on termination of membership.

7.4 **Rights of members**

- 7.4.1 The member may use, occupy and enjoy his or her personal space and the member may, together with other members jointly use and enjoy the common spaces.
- 7.4.1 The housing co-operative and a member must, both in respect of a house have the rights and obligations set out in clause 7.4 of this constitution to the extent that they apply to the housing co-operative or the member, as the case may be.
- 7.4.2 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 meetings of members, each member has the right to one vote only, unless they have a legally binding proxy.

7.5 **Obligations of members**

- 7.5.1 Members must adhere to this constitution and any amendments thereto, as well as any other by-laws made from time to time by the Board of Directors.
- 7.5.2 Members must notify the co-operative whenever any of their personal details change, for example when their home addresses changes.
- 7.5.3 A person becomes a member of the Housing Co-operative when his or her application for membership has been accepted by the board.

7.6 **Building of Houses**

- 7.6.1 The housing co-operative will have ablution services installed to the personal space.
- 7.6.2 The members will construct homes on the personal spaces in accordance with plans prepared and approved by consultants, housing co-operative and the municipality, or if the members so decided, a contractor may be appointed.
- 7.6.3 The construction of the homes will be undertaken with materials acquired by the housing co-operative for the member and removed with the assistance and guidance of the housing co-operative in its capacity as a support organization.
- 7.6.4 Where a contractor is not appointed, the members undertake to abide by the general instructions of the technical advisors and/or supervisors of the housing co-operative in the construction of the home.
- 7.6.5 Any housing construction activity using “the enhanced peoples housing process” is not subject to the protection of the National Home Builders Registration Council or the Housing Consumers Protection Measures Act, 1998, and both the member and Housing Co-operative therefore undertake to take due care in the building of the home to avoid structural defects.

#### 7.7 **User Charges**

- 7.7.1 Members will have to pay user charges as required in terms of the user agreement in advance on or before the first day of each month.
- 7.7.2 The board may from time to time increase the user charges where the costs to the housing co-operative increase.
- 7.7.3 The housing co-operative must give the member thirty (30) days written notice of any proposed increase and the reasons for the increase.
- 7.7.4 The housing co-operative must furnish the member with receipts for any payments under this clause.

#### 7.8 **Municipal Services**

Members must conclude an agreement with the municipality to provide water and electricity and members must pay for this directly to the municipality. The housing co-operative may, at any time, if it so chooses, make payment to the municipality and to recover the costs from the member, in which case such cost will be added to the amounts in sub-clause 7.7.1

#### 7.8 **General Duties of the Housing Co-operative**

- The housing co-operative, as is required in terms of the “peoples housing process”, will –
- 7.8.1 employ planning and engineering consultants to assist Members to plan services in their personal spaces and homes;
  - 7.8.2 consider and where satisfied approve plans for homes and services;
  - 7.8.3 ensure that the completion of different construction phases (pipes, roads, foundations, walls and roof) are inspected by an independent technical certifier before handover;
  - 7.8.4 negotiate and pay material suppliers;
  - 7.8.5 employ a supervisor and/or technical advisor to check inspect the building process;
  - 7.8.6 advise the members on how to manage small contractor(s) and/or mutual help building;
  - 7.8.7 open a special account to receive and administer subsidies;
  - 7.8.8 pay-out funds from the subsidy account according to the approved budget; and
  - 7.8.9 Generally perform the duties of the support organisation in terms of the people’s housing process.

#### 7.10 **Maintenance**

- 7.10.1 The housing co-operative must maintain common spaces. Each personal space must be maintained by the members.
- 7.10.2 In a case whereby the Enhanced People's Housing Process is not utilized then The housing co-operative must repair major structural defects contemplated by the Housing Consumer Protection Measures Act, 1998) that may arise within twelve (12) months as from the date of the member moving in.
- 7.10.3 The housing co-operative is not responsible for any damage to homes caused by the members and his/her dependants, visitors or invites, which damage must be repaired by the member.
- 7.10.4 The housing co-operative must ensure that all buildings are insured at all times against natural disasters.
- 7.10.5 The housing co-operative may adopt rules, policies, and/or procedures for the maintenance of the personal and common spaces with which members must comply.

7.11 **Personal Occupation**

- 7.11.1 The member must personally reside in the home (with his/her dependents) or such other persons approved by the housing co-operative and may not allow any other person to occupy the home instead of the members.
- 7.11.2 The member may not rent-out the house, or any part thereof, without the permission of the housing co-operative. The house may only be leased to other persons with consent of the board on such terms and conditions as may be decided by the board .

7.12 **Inspection**

- 7.12.1 The representatives of the housing co-operative may at all reasonable times enter and inspect the personal space and the house. Where possible, such inspection must be arranged with the member beforehand.

7.13 **Upgrading/Structural Alterations**

- 7.13.1 The member may not make any structural alterations, and/or additions to a home constructed on the personal space or the common space without first getting approval from the housing co-operative.
- 7.13.2 The housing co-operative may not refuse approval in respect of the personal space unreasonably.
- 7.13.3 Any alterations or additions made must –
  - (a) be carried out from the member's own pocket;
  - (b) be in accordance with any other reasonable conditions of the board of the housing co-operative;
  - (c) be approved subject to the applicable policies of the board.
- 7.13.2 In the event of a transfer of shares in terms of in clause 8 of this constitution, the new member will in addition to the amount calculated in terms of sub-clause 8.1.2 and sub-clause 8.1.3 also pay an amount equal to the cost of the improvements approved by the board of the housing co-operative minus the amount of any damages to the unit as decided by the housing co-operative in their sole discretion.

7.14 **Injury**

- 7.14.1 The housing co-operative will not be responsible for any damage or injury to the member, unless willful.

7.15 **No Set Off**

7.15.1 The Member may not set off any debt owed to the co-operative against what the co-operative owes the member.

7.16 **House Rules, Policies and Procedures**

7.16.1 The member will comply with the house rules at all times.

7.16.2 The house rules are for the convenience, comfort, and general well-being of the members.

7.16.3 The board may make policies and procedures necessary to regulate the affairs of the co-operative, maintenance and the collection of user charges as contemplated in clause 7 of this constitution.

7.17 **Notices**

7.17.1 If any party needs to give notice to the other party, such notice must be in writing and must be delivered, to the member, by hand, at the personal space and to the housing co-operative, by hand, at the registered office of the housing co-operative respectively, in which case delivery shall be deemed to have happened when the notice was so delivered.

8. **SHARES**

8.1 **Issue of shares and minimum shareholding**

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

8.1.2 The nominal value of each share must be R..... (..... Rand) of which 100% (hundred percent) shall be payable in money on application.

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 him without application therefore such number of shares as will make up the insufficiency and **100%** of the 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**

- 8.3.1 A person whose shares have been forfeited is responsible for immediate payment to the co-operative of the entire amount unpaid on such shares.
- 8.3.2 All moneys paid to the co-operative in respect of forfeited shares must be added to the general reserve.
- 8.3.3 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.
- 8.3.4 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**

- 9.1.1 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 realizable value of the assets of the co-operative contemplated in clause 8 of this constitution, 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**

The board may, if so authorized by members in terms of clause 17 of this constitution, in addition to the loans secured by some or all of the assets of the co-operative, 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] Interest 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.....

-----  
DIRECTOR

-----  
SECRETARY "

**10. LIMITATION OF LIABILITY**

- 10.1 A Member's obligations 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 him or her 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 their membership agreement.

**11. ASSOCIATE MEMBERS**

- 11.1 Non-members who want to 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.
- 11.2 Associate membership is temporary and is valid for a period not exceeding 12 months.
- 11.3 An associate member may at any time apply to become a full member of the co-operative.

- 11.4 Associate member(s) may after a period of 12 months, subject to the approval by the members of the co-operative-
  - (a) Have the choice to become full time members of the co-operative; or
  - (b) May have their associate membership renewed for a further period 12 month period.
- 11.5 Associate members may be elected as non-executive Directors
- 11.6 Associate members do not have any voting rights.

## **12. TRANSFER OF MEMBERSHIP, MEMBERS LOANS AND SHARES**

- 12.1 The membership of a member who has died may in terms of clause 13.1 be transferred to a member of that deceased member's family residing in the house and who regards the house as its primary home or another person appointed by the executor of the deceased member's estate subject to the approval by the board of the proposed transferee and that person being able to pay for membership papers to comply with clause 7 of this constitution. In the event of such transfer not taking place, the membership of the deceased member must be cancelled by resolution of the board.
- 12.2 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.
- 12.2 The Board may at any time refuse to approve and register a proposed transfer.
- 12.3 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.
- 12.4 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**

### **13.1 Termination on death**

- 13.1.1 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 of the proposed transferee. In the event of such transfer not taking place, the membership of the deceased member shall be terminated by resolution of the Board.
- 13.1.2 Upon such termination, the membership fees concerned are forfeited and the amount paid in respect thereof is credited to the general reserve of the Co-operative.
- 13.1.3 The shares registered in the name of a member who has died, must be cancelled by resolution of the Board at the request the executor or liquidator of the estate.
- 13.1.4 Upon such cancellation the Co-operative must, pay to the executor the amount paid up on the shares for payment to the estate of the deceased member: Provided that if the value of such shares, according to the latest completed financial statements of the Co-operative, is less than their nominal value, the Co-operative shall pay -
  - (a) If the shares are fully paid up, an amount equal to the value so determined; or
  - (b) If the shares are not fully paid up, 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.
- 13.1.5 If it is determined that the repayment of the nominal value of a member's 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 its 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.

- 13.1.6 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.

### 13.2 **Termination on change of place of residence**

- 13.2.1 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.
- 13.2.2 Upon such termination, the membership fees of the member concerned are forfeited to the Co-operative and the amount thereof is credited to the general reserve of the Co-operative.
- 13.2.3 The shares registered in the name of such member may be cancelled by resolution of the Board.
- 13.2.4 Upon such cancellation the Co-operative must refund to the ex-member, the amount paid up on the shares: Provided that if the value of such shares, according to the latest completed balance sheet of the Co-operative is less than their nominal value, the Co-operative shall pay the ex-member:
- (a) If the shares are fully paid up, an amount equal to the value so determined; or
  - (b) If the shares are not fully paid up, 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.
- 13.2.5 Any amount payable by the Co-operative shall be set off against any debt for the payment of which the member is liable.

### 13.3 **Termination when a member is non-active**

- 13.3.1 Whenever a member does not actively participate in the activities of the Co-operative for a period of **three months** or has neglected to notify the Co-operative of any change in his address, whereby the Co-operative is prevented from contacting him, his membership may, be terminated by resolution of the Board.
- 13.3.2 Upon such termination, the membership fees of the member concerned are forfeited to the Co-operative and the amount thereof is credited to the general reserve of the Co-operative.
- 13.3.3 The shares of such member may be cancelled by resolution of the Board.
- 13.3.4 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 -
- (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 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.
- 13.3.5 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**

- 14.1 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.
- 14.2 The membership of a member, who has resigned, shall be terminated by resolution of the Board. The amount paid in respect of membership fees shall be forfeited to the Co-operatives and credited to the general reserve.
- 14.3 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.
- 14.4 Any amount payable by the Co-operative in terms of clause 8 and 9 of this constitution shall be set off against any debt for the payment of which the member or his estate is liable.
- 14.5 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**

- 15.1 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 him 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 16, he/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 himself setting out his objections to the proposed suspension or expulsion.
- 15.5 The Board must notify him in writing if it is decided to suspend or expel a member, of -
  - (a) the date on which his suspension or expulsion comes into effect;
  - (b) period of time during which the suspension will apply; and
  - (c) 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 The shares of an expelled member must be cancelled, subject to the provisions of clause 13

of this constitution, by resolution of the board and upon such cancellation the member shall forfeit his shares.

## **17. GOVERNANCE OF CO-OPERATIVES**

### **17.1 Board of directors**

- 17.1.1 The affairs of the Housing Co-operative must be managed by a Board of Directors consisting of a minimum of ..... and a maximum of ..... Directors. The Directors must exercise the powers and perform the duties of the Co-operative. The Board remains accountable to the members regarding the affairs of the Co-operative even in instances where the Co-operative decides to appoint a professional manager (the professional manager accounts to the Board).
- 17.1.2 The number of Directors shall, subject to the approval of members at the next general meeting, be determined by the Board from time to time. If, however, the members do not approve the decision of the Board and a vacancy arises as a result thereof, such vacancy shall be regarded as a casual vacancy to be filled in terms of clause 17.6
- 17.1.3 Without prejudice to the provisions of clause 17.3 and 17.7 of this constitution, Directors shall be elected at the annual general meeting.
- 17.1.4 Associate members may be elected as non-executive directors.
- 17.1.5 Only directors who are full members of the co-operative shall have voting rights.
- 17.1.6 Members may by special resolution passed at a meeting convened by a supervisory committee or called by at least twenty five percent (25%) of members where the co-operative does not have a supervisory committee, dissolve the Board.
- 17.1.7 If houses owned by the housing co-operative were funded from government housing subsidies, the Provincial Housing Development Board, or equivalent institution that may take its place, shall be entitled to appoint a non-executive director to the board.
- 17.1.7 The housing co-operative must also be entitled to appoint a director to the board as long as a management agreement exists between the housing management co-operative and the housing co-operative. A primary co-operative may not appoint a Director to sit on a board of a Housing Management Co-operative after the service agreement has expired.

### **17.2 Powers and restrictions on directors**

Powers of Directors:

- (a) The directors have the power to open a bank account in the name of the co-operative.
- (b) 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.
- (c) The directors have the power to acquire or hire movable or immovable property on behalf of the co-operative.

#### **17.2.1 Restrictions on Directors**

- (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.

**17.3 Persons not competent to be Director**

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 Term of office**

17.4.1 The term of office of the Directors of the Co-operative shall be .....years.<sup>5</sup>

17.4.2 Retiring Directors are eligible for re-election.

17.4.3 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.

**17.5 Nomination of Directors and voting for Directors**

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

17.5.2 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 clause 17.6

17.5.3 The method to be followed in electing Directors shall be by open ballot.

17.5.4 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.

**17.6 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.

**17.7 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

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<sup>5</sup> Section 141)(i) of the Act requires that the term of office of directors should be reasonable.

- office of Director; or
- (b) If he absents himself 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.

17.8. **Conditions and Processes for the appointment of the Chairperson, Vice-Chairperson and Acting Chairperson of the Board**

- 17.8.1 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.
- 17.8.2 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.
- 17.8.3 The Chairperson of the Board of the Co-operative shall vacate the office of Chairperson if he -
  - (a) Ceases to be a Director of the Co-operative; or
  - (b) Resigns as Chairperson; or
  - (c) Is relieved of the office of Chairperson by the Board.
- 17.8.4 The provisions of clause 17.8.3 shall be applicable *mutatis mutandis* to the vice-Chairperson of the Board.

17.9. **Board meetings and Quorum**

- 17.9.1 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.
- 17.9.2 The majority of Directors shall constitute a quorum of a meeting of the Board.
- 17.9.3 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 **By-laws**

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

17.11 **Delegation of powers and/or functions to a committee, director or manager**

- 17.11.1 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.
- 17.11.2 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.

17.12 **Supervisory committee**

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

- 17.12.2 The supervisory committee must consist of members who are not directors.  
17.12.3 The supervisory committee is responsible to supervise the Board by representing the interests of members.

## **18. GENERAL MEETINGS**

18.1.1 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.

18.1.2 The annual general meeting must:

- (a) Category B primary co-operatives must appoint an independent reviewer and category C primary co-operatives must appoint an auditor.<sup>6</sup>;
- (b) Category A primary co-operatives must approve the annual report prepared by the Board, category B primary co-operatives must approve the independently reviewed report and category C primary co-operatives must approve the audited report for the previous financial year<sup>7</sup>;
- (c) Approve the financial statements and auditor's report where applicable for the previous financial year;
- (d) Elect Directors; and
- (e) Decide on the activity plan presented by the Board of Directors

### **18.2 Special General Meetings**

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.

### **18.3 Convention of Meetings**

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

18.3.2 A special general meeting shall be convened –

- (a) by the supervisory committee; or
- (b) by five at least 25% of the members of the co-operative; if such members find justifiably good reason that the board is dysfunctional or has acted contrary to any law

18.3.3 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.

18.3.4 The supervisory committee must within 7 days of a meeting hosted in terms of sub-clause 18.3.2 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 fails to comply 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

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<sup>6</sup> Primary category A co-operatives do not have to appoint an independent reviewer or an auditor. Their annual reports are completed by the Board. Secondary co-operatives, Tertiary co-operatives and the National Apex co-operative must appoint auditors. See Section 50 of Act.

<sup>7</sup> Secondary and tertiary co-operatives must approve the audited report of the previous financial year.

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 in terms of Co-operatives Act No. 6 of 2013 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.

## 18.6 **Chairperson of general meetings**

- 18.6.1 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.

## 18.7 **Voting by members**

- 18.7.1 At all meetings of the co-operative, each member shall have one vote<sup>8</sup>.

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<sup>8</sup> 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

- 18.7.2 Any matter for decision by a general meeting shall be decided by means of a vote on a show of hands or by ballot.
- 18.7.3 A vote by ballot shall not be held unless it is demanded by at least five members present at the meeting and entitled to vote in a vote by ballot.
- 18.7.4 A vote by ballot must be held in such manner as the Chairperson stipulates. 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.
- 18.7.5 A declaration by the Chairperson that a resolution has, on a show of hands or by ballot, been carried, or carried 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.
- 18.7.6 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.
- 18.7.7 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.
- 18.7.8 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 resolution**

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; and
- (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.
- (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.

## 19. **FINANCIAL MANAGEMENT**

### 19.1 **Banking account**

- 19.1.1 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.
- 19.1.2 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.
- 19.1.3 The board may by special resolution authorize the housing management co-operative to sign cheques on behalf of the housing co-operative, subject to such conditions and requirements as may be decided by the board of the Housing Cooperative.

### 19.2 **Financial year**

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of the 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.

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

### 19.3 **Financial records**

- 19.3.1 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.
- 19.3.2 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.
- 19.3.3 A co-operative that does conducts transactions with members will keep its financial records for a minimum 5 (five) years and a co-operative that conducts transactions with non-members will keep its records for a minimum of 3 (three) years.

### 19.4 **Annual financial statements**

- 19.4.1 An annual report<sup>9</sup>, independently reviewed<sup>10</sup> report or an audited report<sup>11</sup>, 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 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**

- 19.5.1 The surplus resulting from the operations of the Co-operative during any financial year shall 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 per cent and need not be more than five per cent of the co-operatives 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.

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<sup>9</sup> Category A primary co-operatives must submit annual reports.

<sup>10</sup> Category B primary co-operatives must submit independently reviewed reports.

<sup>11</sup> Category C primary co-operatives, secondary co-operatives, tertiary co-operatives and the national apex co-operative must submit audited reports.

- 19.5.2 The amount which is available out of the surplus for distribution to members shall be applied in one or more of the following ways only, viz. –
- (i) to pay interest at a rate not exceeding 15% (fifteen percent) to members on the amounts paid up by them on their shares as at the last day of the financial year;
  - (ii) to pay bonuses to members in accordance with the provisions of Clause 19.6

**19.6 Payment of bonus**

- 19.6.1 The amount mentioned in clause 19.5.2(ii) must, be allocated to members according to the patronage proportion and the amount allocated to a member must by resolution of members at the annual general meeting, be applied in one or more of the following ways-
- (a) by paying it out either wholly or partly in cash;
  - (b) by utilizing it for buying of fully paid-up members shares:
    - (i) provided that an amount accruing to a member which is insufficient to fully pay up a share may be applied, by resolution of the board, in accordance with the provisions of paragraphs [a] or [c] of clause 19.5;
    - (ii) provided that notice will be given to each member of the number of shares purchased for the member;
    - (iv) provided that such shares will be either issued or transferred in terms of clauses 12.2 and 16, by resolution of the board; and
    - (v) provided that share certificates will be issued and forwarded to members.
  - (c) by setting it aside in the Deferred Bonus Payment Fund for future payment to members.
- 19.6.2 Interest on share capital or bonus declared payable to members, except amounts transferred to the Deferred Bonus Payment Fund, does not earn interest from the Co-operative.
- 19.6.3 Any interest on share capital or any bonus remaining unclaimed for a period of 3 (three) years from the date on which such interest or bonus was declared payable may, by resolution of the Board, be declared forfeit and added to the general reserve of the Co-operative.

**19.7 Deferred bonus payment fund**

- 19.7.1 All amounts transferred to the "Deferred Bonus Payment Fund" in terms of clause 19.6.1 [c] shall be credited in the respective names of the members in the books of the Co-operative.
- 19.7.2 The Deferred Bonus Payment Fund may be invested separately or may be used by the Co-operative to carry out any of its objects: Provided that the fund must not be utilised to defray any loss resulting from the operations of the Co-operative.
- 19.7.3 The interests of members and former members in the Deferred Bonus Payment Fund must be repaid to them in the following circumstances and subject to the conditions mentioned, ie. -
- (a) When the fund has been functioning for five years, the interests built up by members and former members during the first year of the fund shall be repaid to those concerned; the following year the interests built up during the second year of the fund shall be refunded, et seq.;
  - (b) on the death of a member or former member the interest of the deceased in the fund shall be paid to his estate;
  - (c) when membership in the Co-operative is terminated in any other way, the interest of the member concerned in the fund shall be repaid to him as it becomes repayable in terms of paragraphs [a] or [b] of this sub-clause: Provided that the Board may authorise payment at an earlier date if the Co-operative is in a position financially to do so: Provided further that the

interest of a former member in this fund shall not be retained in the fund for more than three years after termination of membership of the former member.

- 19.7.4 The amounts payable to a member or former member in terms of this clause shall be applied in payment or part payment of any amount due to the Co-operative by such member or former member.
- 19.7.5 A member's or former member's credit in the fund may be transferred to someone else only with the approval of the Board: Provided that no such transfer shall be approved unless the transferee is a member of the Co-operative.
- 19.7.6 Any amount to the credit of a member or former member in the Deferred Bonus Payment Fund remaining unclaimed for a period of 3 (three) years from the date it becomes payable to him may by resolution of the Board be declared forfeit and transferred to the general reserve of the Co-operative: Provided that such a transfer shall not be made unless the member or former member concerned has first been warned of the proposed transfer by means of a notice sent to his last address, as entered in the register of members and he has been given an opportunity of at least six months to claim the amount.

#### 19.8. **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.

## 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), address, fax, email and telephone number 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, identity number, address, fax, email and telephone 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 for records for a period of five years after the end of 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 section 20.4

## **21. AMENDMENT OF CONSTITUTION**

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

**NAME OF CO-OPERATIVE** .....

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR PRIMARY CO-OPERATIVE**

<b>FULL FORENAMES, SURNAME AND IDENTITY NUMBER OF FOUNDER MEMBER (PRIMARY CO-OP)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUDER MEMBER(PRIMARY CO-OP)</b>
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... ..... Postal address..... ..... .....

**NAME OF CO-OPERATIVE** .....

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR PRIMARY CO-OPERATIVE**

<b>FULL FORENAMES, SURNAME AND IDENTITY NUMBER OF FOUNDER MEMBER (PRIMARY CO-OP)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER (PRIMARY CO-OP)</b>
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... Postal address..... ..... .....
Full forenames..... ..... Surname..... ..... ID No ..... Signature: .....	Home address..... ..... Postal address..... ..... .....

**NAME OF CO-OPERATIVE .....**

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR SECONDARY CO-OPERATIVES**

<b>FULL FORENAMES, SURNAME, IDENTITY NUMBER OF REPRESENTATIVE OF FOUNDER CO-OPERATIVE MEMBER – NAME AND REG. NO. (PRIMARY CO-OPERATIVE)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER(PRIMARY CO-OP) PHYSICALAND POSTAL ADDRESS OF FOUNDER MEMBER (PRIMARY CO-OPERATIVE)</b>
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....

**NAME OF CO-OPERATIVE .....**

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR SECONDARY CO-OPERATIVES**

<b>FULL FORENAMES, SURNAME, IDENTITY NUMBER OF REPRESENTATIVE OF FOUNDER CO-OPERATIVE MEMBER – NAME AND REG. NO. (PRIMARY CO-OPERATIVE)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER(PRIMARY CO-OP) PHYSICALAND POSTAL ADDRESS OF FOUNDER MEMBER (PRIMARY CO-OPERATIVE)</b>
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....
Name of Primary Co-operatives..... ..... Registration number: ..... Full forenames and surname of representative person: ..... ..... ID No.: ..... Signature: .....	Business address of primary co-operative..... ..... ..... ..... Postal address of primary co-operative..... ..... .....

**NAME OF CO-OPERATIVE** .....

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR TERTIARY CO-OPERATIVES.**

<b>FULL FORENAMES, SURNAME, IDENTITY NUMBER OF REPRESENTATIVE OF FOUNDER CO-OPERATIVE MEMBER – NAME AND REG. NO. (SECONDARY CO-OPERATIVE)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER(SECONDARY CO-OP) PHYSICALAND POSTAL ADDRESS OF FOUNDER MEMBER (SECONDARY CO-OPERATIVE)</b>
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... Postal address of secondary co-operative ..... .....
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... Postal address of secondary co-operative ..... .....
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... Postal address of secondary co-operative ..... .....

**NAME OF CO-OPERATIVE** .....

**NOTE: THIS PAGE MUST BE SIGNED BY ALL FOUNDER MEMBERS FOR TERTIARY CO-OPERATIVES.**

<b>FULL FORENAMES, SURNAME, IDENTITY NUMBER OF REPRESENTATIVE OF FOUNDER CO-OPERATIVE MEMBER – NAME AND REG. NO. (SECONDARY CO-OPERATIVE)</b>	<b>PHYSICAL AND POSTAL ADDRESS OF FOUNDER MEMBER(SECONDARY CO-OP) PHYSICALAND POSTAL ADDRESS OF FOUNDER MEMBER (SECONDARY CO-OPERATIVE)</b>
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... ..... Postal address of secondary co-operative ..... .....
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... ..... Postal address of secondary co-operative ..... .....
Name of secondary co-operative..... ..... Registration number: ..... Full forenames and surname of representative person ..... ..... ID No.: ..... Signature: .....	Business address of secondary co-operative ..... ..... ..... Postal address of secondary co-operative ..... .....