

**..... PRIMARY CO-OPERATIVE LIMITED**

**NAME**

1. [a] The name of the Co-operative is ..... **PRIMARY CO-OPERATIVE LIMITED.**

**FORM OF CO-OPERATIVE**

2. This is the constitution of a business undertaking formed as a **Primary Co-operative** with limited liability in terms of the provisions of the Co-operatives Act, 2005 (Act 14 of 2005).

**DEFINITIONS**

3. In this constitution, unless the context indicates otherwise, a word or expression to which a meaning is attached in the Co-operatives Act, 2005 shall have a similar meaning and -

"the Act" means the Co-operatives Act, 2005 (Act 14 of 2005);

"co-operative" means the ..... **PRIMARY CO-OPERATIVE LIMITED** that is incorporated in terms of the Act;

"entrance fee" means a once off fee payable to obtain membership of the co-operative, and is paid on application for membership;

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

"membership fee or subscription fee" means an annual fee payable towards the running of the co-operative, and may be paid off in equal monthly installments;

"member loan" means a loan made by a member to a Co-operative in terms of clause 62;

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

**PLACES OF BUSINESS**

- 4.1 The main place of business of the Co-operative is situated at ..... (Place) ..... (Province).

**RECORD KEEPING BY CO-OPERATIVE AND ACCESS TO INFORMATION**

- 5.1 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 in a Minute Book.
- [d] A **LIST OF MEMBERS / REGISTER OF MEMBERS** setting out-

- [i] the name and address of each member.
  - [ii] the date on which each member became a member.
  - [iii] if applicable, the date on which a person's membership was terminated.
  - [iv] the amount of any membership fees paid, the number of membership shares owned and the number and amount of member loans.
- [e] A **REGISTER OF DIRECTORS** setting out-
- [i] the name, address and identity number of each director, including former directors.
  - [ii] the date on which such directors became or ceased to be directors.
  - [iii] 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] Adequate **accounting records**, including records reflecting the transactions between each member and the co-operative for the purpose of calculating the patronage proportion.

5.2 The co-operative must retain its accounting records-

- [a] for a period of five years after the end of the financial year to which they relate, in the case its main object involves its members conducting transactions with it.
- [b] for a period of three years after the end of the financial year to which they relate, in the case its main object does not involve its members conducting transactions with it.

5.3 Subject to clause 5.4 hereunder, members of the co-operative may examine the records referred to in clause 5.1 above during normal business hours of the co-operative and may make copies thereof after payment of a fee.

5.4 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.

5.5 Where the constitution of a co-operative provides for the establishment of a supervisory committee, the supervisory committee must determine whether the board of directors is entitled to withhold information in terms of clause 5.4 above.

### **OBJECTIVES, BUSINESS DESCRIPTION & RESTRICTIONS THERETO**

6. The Objectives and Business Description of the Co-operative are as follows -

- [a] .....
- (b) .....
- © .....
- (d) .....

7. Restrictions: The business is restricted to the above-mentioned Objectives and Business Description.

### **MEMBERSHIP**

#### **Requirements for membership and Restrictions to membership**

8.1 Requirements: Any natural person, who is over the age of 18 years, may on application to the Board, become a member of the Co-operative.

- 8.2 Restrictions: The board may limit the maximum number of members, as long as the co-operative does not have less than 5 members.

#### **Application for membership**

- 9.1 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.
- 9.2 The Board must consider every application for membership and has the right to accept or reject an application.
- 9.3 The Board must, within **3** months after receipt of an application for membership, notify the applicant of its decision and, in the event of an application for membership being rejected, any amount paid by the applicant to the Co-operative must be refunded to him.
- 9.4 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 him.

#### **Entrance Fee and Membership Fee / Subscription Fee**

- 10.1 An Entrance Fee of **R .....-00** must be paid on application for membership. Such fee is not refunded on termination of membership.
- 10.2 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 installments. Such fee shall not be refunded on termination of membership.

#### **Rights and Obligations of Members**

##### **11.1 Members Rights:**

- [a] Members have the right to do business with or through the Co-operative.
- [b] Members have the right to appoint an auditor;
- [c] During ballots at meetings of members, each member has the right to one vote.
- [d] Members that are not suspended or expelled from the co-operative, have the right to attend meetings of the co-operative.

##### **11.2 Obligations of Members:**

- [a] Members must adhere to this constitution and any amendments thereto, as well as any by-laws made by the Board of Directors.
- [b] Members must participate in the business of the co-operative.
- [c] Members must notify the co-operative whenever any of their personal details change, example when their home address changes.

#### **ISSUE OF SHARES AND MINIMUM SHAREHOLDING**

- 12.1 Shares issued by the Co-operative must all be of the same class, ranking and nominal value.
- 12.2 The nominal value of each share must be **R.....** (..... Rand) of which **100%** (hundred percent) shall be payable in money on application.
- 12.3 When the co-operative is founded each member must have a minimum of ..... **(number of) shares.**
- 12.4 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.

#### **CERTIFICATES OF SHARES AND LOANS**

13. 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.

#### **LIABILITY OF MEMBERS**

14. The liability of a member is limited to an amount equal to the nominal value of the shares in the Co-operative held by him in so far as that amount has not been fully paid up.

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

- 15.1 Membership, Member Loans and Shares may be transferred only with the approval and on the authority of the Board which shall satisfy itself that the proposed transferee is qualified to be a member of the Co-operative.
- 15.2 The Board may at any time refuse to approve and register a proposed transfer.
- 15.3 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.
- 15.4 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.

#### **CONDITIONS AND PROCESSES FOR TERMINATION OF MEMBERSHIP**

##### **Termination on death**

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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 balance sheet 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.

##### **Termination on Change of Place of Residence**

- 17.1 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.
- 17.2 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.
- 17.3 The shares registered in the name of such member may be cancelled by resolution of the Board.
- 17.4 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.

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

- 18.1 Whenever a member does not actively participate in the activities of the Co-operative for a period of **one year** 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.
- 18.2 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.
- 18.3 The shares of such member may be cancelled by resolution of the Board.
- 18.4 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 balance sheet 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.

#### **WITHDRAWAL OF MEMBERSHIP**

- 19.1 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.
- 19.2 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.
- 19.3 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 balance sheet 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.
- 20. Any amount payable by the Co-operative in terms of clauses 16, 17, 18 and 19 shall be set off against any debt for the payment of which the member or his estate is liable.

#### **CONDITIONS AND PROCESS FOR SUSPENSION AND EXPULSION**

- 21.1 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.
- 21.2 The suspension of a member may be revoked by resolution of the Board at any time.

- 22.1 Before a member can be suspended or expelled in terms of clause 21, he has to be given prior written notice of the intention of the Board.
- 22.2 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.
- 22.3 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.

#### **Disciplinary measures**

- 23.1 While under suspension a member forfeits his right to attend general meetings or to vote thereat by proxy.
- 23.2 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.
- 23.3 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.
- 23.4 The shares of an expelled member must be cancelled, subject to the provisions of clause 24[1], by resolution of the board and upon such cancellation the member shall forfeit his shares.

#### **LIABILITY IN RESPECT OF FORFEITED SHARES**

- 24.1 A person whose shares have been forfeited, is responsible for immediate payment to the co-operative of the entire amount unpaid on such shares.
- 24.2 All moneys paid to the co-operative in respect of forfeited shares must be added to the general reserve.
- 24.3 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.
- 24.4 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.

#### **MANAGEMENT OF CO-OPERATIVE**

##### **Board of Directors**

- 25.1 The affairs of the Co-operative must be managed by a Board of Directors consisting of a minimum of 3 and a maximum of ..... Directors. The Directors must exercise the powers and perform the duties of the Co-operative.
- 25.2 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 33.
26. Without prejudice to the provisions of clauses 33 of this constitution, Directors shall be elected at the annual general meeting.

##### **Powers and Restrictions on Directors**

- 27.1 **Powers:**
- [a] The directors have the power to obtain membership of a secondary co-operative, which seeks to promote any matter in which the co-

operative has an interest.

- [b] The directors have the power to open a bank account in the name of the co-operative.
- [c] The directors have the power to suspend by resolution a member for a period to be determined by the Board but which shall not be longer than the date of the next annual general meeting.
- [d] The directors have the power to acquire or hire movable or immovable property on behalf of the co-operative.

## 27.2 Restrictions:

- [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 organisation.

### **Persons not competent to be Director**

28. 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.

### **Term of office**

29.1 The term of office of the Directors of the Co-operative shall be **3 (three)** years. (*not more than 4 years*)

29.2 Retiring Directors are eligible for re-election.

29.3 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.

### **Nomination of Directors and voting for Directors**

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

30.2 Without prejudice to the provisions of clauses 33 a member, including a retiring Director, qualifies for election as Director only if he is nominated in terms of sub-clause 30[1].

- 30.3 [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 33.

31. The method to be followed in electing Directors shall be as determined by the Chairperson of the meeting.

32. 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.

### **Filling of a vacancy on the Board**

33. 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, subject to the provisions of clause 28. 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.

#### **Conditions for Vacation of office**

34. A Director shall vacate his office -

- [a] If he becomes incompetent in terms of clause 28 of this constitution to hold the 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.

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

35.1 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.

36.2 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.

37. 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.

38. The provisions of clause 46 shall be applicable mutatis mutandis to the vice-Chairperson of the Board.

#### **Board meetings and Quorum**

39.1 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.

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

39.3 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.

#### **By-laws**

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

#### **Delegation of powers to a committee**

41.1 The Board may delegate one or more of its powers to a Director or to a Committee appointed by the Board or Manager of the Co-operative.

41.2 Any Director or Committee or Manager so appointed must in the exercise of the powers so delegated, abide by such rules as may be made and follow such instructions as may be issued, in regard thereto, by the Board.

#### **GENERAL MEETINGS**

42.1 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.

42.2 The annual general meeting must:



- [a] Appoint an auditor;
- [b] Approve a report of the Board on the affairs of the Co-operative for the previous financial year;
- [c] Approve the financial statements and auditor's report where applicable for the previous financial year;
- [d] Elect Directors; and
- [e] Decide on the future business of the Co-operative.

#### **Special General Meetings**

43. 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.

#### **Convention of Meetings**

- 44.1 An annual general meeting shall be convened on authority of the Board.
- 44.2 A special general meeting shall be convened -
- [a] by at least two Directors of the Co-operative; or
  - [b] by five or more members of the Co-operative constituting in number at least 10% (ten percent) of all the members of the Co-operative: Provided that such members shall not be entitled to convene an special general meeting unless they have beforehand in writing petitioned the Directors to convene such a meeting and the meeting is not convened within 21 (twenty one) days reckoned from the date the petition was lodged, or unless for any reason there are no Directors to whom such a petition can be addressed.
- 44.3 Any meeting convened in terms of sub-clause 2[b] by the petitionists shall, as far as possible, be convened and held in the same manner as is prescribed for meetings convened and held by the Board and any reasonable expense incurred by the petitionists in securing the names and addresses of members, in sending notices of the meeting to them and hiring accommodation for the holding of the meeting if so resolved by such meeting, be refunded to the petitionists by the Co-operative.

#### **Notice of general meeting**

- 45.1 A general meeting shall be convened by at least 14 days notice in writing to each member of the Co-operative.
- 45.2 The notice convening the meeting shall in addition to the time and place of the meeting state the purpose for which it is convened.
- 45.3 A notice may be delivered personally, forwarded by post to the member at his registered address, emailed to a registered email address of the member or faxed to the registered fax number of the member.
- 45.4 Non-receipt by a member of a notice of a general meeting of the Co-operative does not render such meeting invalid.
- 45.5 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.

#### **Quorums**

46. 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.
47. 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.
- 48.1 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.

- 48.2 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.
- 48.3 If a quorum is not present within one hour after the time fixed for an adjourned meeting, the members present, provided they are not less than five in number, shall be deemed to constitute a quorum: Provided that a special resolution may not be passed by such a meeting.

#### **Chairperson of general meetings**

- 49.1 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 an annual general meeting or a special general meeting convened in terms of clauses 44.1 and 44.2[a].
- 49.2 A person elected by the meeting shall act as the Chairperson of a special general meeting convened in terms of clause 44.2[b] of this constitution.

#### **Voting by members**

50. At all meetings of the co-operative, each member shall have one vote.
- 51.1 Any matter for decision by a general meeting shall be decided by means of a vote on a show of hands or by ballot.
- 51.2 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.
- 51.3 A vote by ballot must be held in such manner as the Chairperson stipulates. Scrutineers 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.
- 51.4 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.
52. 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.
53. 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.
54. 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.

#### **Special resolution**

55. 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 % (seventy-five 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.

#### **PROHIBITED AND PERMITTED LOANS AND SECURITY**

- 56.1 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.
- 56.2 The co-operative may not give financial assistance in terms of sub-clause 1 above 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.
- 56.3 In determining the realisable value of the assets of the co-operative contemplated in sub-clause 2[b] above, the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee must be excluded.

#### **RESTRICTIONS RELATING TO UNSECURED MEMBERS LOANS**

- 57.1 The co-operative shall not borrow or raise money or overdraw a banking account except on authority of a special resolution: Provided that the co-operative may borrow or raise money or overdraw a banking account without the said authority up to an amount not exceeding one half of the aggregate of its share capital and general reserve.
- 57.2 The board may, if so authorized by members in terms of sub-clause [1] above, in addition to the loans secured by some or all of the assets of the co-operative, the issue of secured debentures and loans obtained from the commercial banks or any other financial institution, further raise loans from members subject to the following conditions:
- [i] No loan from any individual member shall amount to less than R1 000 (one thousand rand) and, for the purpose of this paragraph, every successive loan from any particular member shall be regarded as a separate loan;
- [ii] No loan shall be repaid within 12 (twelve) months after receipt;
- [iii] Interest shall be paid on loans at a rate per annum to be determined by the board from time to time;
- [iv] An acknowledgement of debt shall be issued in respect of each loan.
- [v] The acknowledgement of debt shall be freely transferable by means of a cession duly registered by the co-operative.
- [vi] Receipt of each loan shall be acknowledged by the following acknowledgment of debt, which shall incorporate either of the conditions [ii] or [iii] mentioned below -

#### ***"ACKNOWLEDGEMENT OF DEBT***

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

*[i] 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 "

### **BANKING ACCOUNT**

- 58.1 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.
- 58.2 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.

### **FINANCIAL YEAR**

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

### **FINANCIAL RECORDS**

- 60.1 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.
- 60.2 The accounting records shall be kept at the registered office of the Co-operative and shall be available at all times for examination by the Directors.

### **Annual financial statements**

- 61.1 An audit 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.
- 61.2 The provisions of clause 60.1 are applicable to the annual financial statements of the Co-operative and its company subsidiaries.

### **AUDIT**

62. The members must appoint an auditor at each annual general meeting, to hold office until the close of the next annual general meeting. The duties of the auditor are outlined in clause 61.

### **SURPLUS**

63. 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] in accordance with section 3(1)(e) of the Act, at least **5%** (five percent) is set aside as a reserve in the Indivisible Reserve Fund and is not

divisible amongst the members, unless the Co-operative winds-up;

- [b] the amount which is set aside as a General Reserve Fund shall not be less than the amount determined by the Board.
- [c] 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 64.

#### **PAYMENT OF BONUS**

- 64.1 The amount mentioned in clause 63[c][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 this clause;
    - [ii] provided that notice will be given to each member of the number of shares purchased for the member;
    - [iii] provided that such shares will be either issued or transferred in terms of clauses 12 and 15, by resolution of the board; and
    - [iv] 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.
- 64.2 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.
- 64.3 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.

#### **DEFERRED BONUS PAYMENT FUND**

- 65.1 All amounts transferred to the "Deferred Bonus Payment Fund" in terms of clause 64.1[c] shall be credited in the respective names of the members in the books of the Co-operative.
- 65.2 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.
- 65.3 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.
- 65.4 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.

- 65.5 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.
- 65.6 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.

#### **AMENDMENT OF CONSTITUTION**

66. The constitution of the Co-operative may be amended by special resolution only.

#### **LIQUIDATION**

67. 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.

**NOTE: This page must be signed by ALL Founder Members.**

<b><u>FULL NAMES AND SURNAMES OF APPLICANTS</u></b> <b><u>FOR MEMBERSHIP</u></b>	<b><u>SIGNATURES OF</u></b> <b><u>APPLICANTS</u></b>
1. .... .....	1. ....
2. .... .....	2. ....
3. .... .....	3. ....
4. .... .....	4. ....
5. .... .....	5. ....
6. .... .....	6. ....
7. .... .....	7. ....
8. .... .....	8. ....
9. .... .....	9. ....
10. .... .....	10. ....
11. .... .....	11. ....
12. .... .....	12. ....

Changes to model constitution:

Other changes may also be made to the constitution, given that the changes are in line with provisions of the Co-operatives Act, 2005 and the rest of the constitution. If any changes were made to this constitution the numbers of the clauses that were changed should be mentioned in a cover letter, as well as the reasons for the changes.