



**Basketball New
Zealand Incorporated**
Incorporated Society No. 217386

Constitution

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Basketball New Zealand Incorporated

Constitution

1. Definitions

1.1 The capitalised words and phrases used in this Constitution shall mean as follows:

“**Affiliated Association**” has the meaning specified in Rule 8.1 (Affiliated Association).

“**AGM**” means the Annual General Meeting of BBNZ as described in Rule 14.1 (General Meetings).

“**Appointed Board Member**” means a person appointed as a Board Member in accordance with this Constitution.

“**Associate Member**” has the meaning specified in Rule 9.1 (Associate Member).

“**BAP**” or, Board Appointments Panel, means the panel described in Rule 18.1 (Composition).

“**BBNZ**” means Basketball New Zealand Incorporated and where relevant includes its Officers, employees, contractors and agents.

“**Board**” means the BBNZ Board as described in this Constitution.

“**Board Members**” means the people elected and appointed to the Board in accordance with this Constitution or the Previous Constitution.

“**Casual Vacancy**” means a vacancy which arises:

- a. due to the office holder resigning prior to the expiry of their term of office;
- b. due to the death of the office holder;
- c. where the office holder has been removed from office in accordance with this Constitution;
- d. where the office holder is no longer eligible to remain in office as specified in this Constitution;
- e. where there are insufficient applications for the available positions of Elected Board Members and the position is left unfilled following an election; or
- f. for Board Members only, due to the Board Member being absent from more than 3 consecutive meetings without having their absence approved by the Chairperson, or without reasonable excuse.

“**CEO**” means the Chief Executive Officer of BBNZ appointed in accordance with Rule 22 (CEO).

“**Chairperson**” means the person described in Rule 17.3 (Chairperson).

“**Chairperson Elect**” means the person described in Rule 29.9d.iii (New Board).

“**Constitution**” means this constitution.

“**Day**” means any day of the week (including a Saturday, Sunday, and a public holiday). Where an action is required to be done within a specified time (such as 30 Days) this means clear days, so it is to be calculated by excluding the date of the notice (or other relevant action) and the date of the meeting (or other relevant activity).

“**Deputy Chairperson**” means the person described in Rule 17.4 (Deputy Chairperson).

“**Delegate**” means a person who represents an Affiliated Association as described in Rule 14.7 (Delegates).

“**Elected Board Member**” means a person elected as a Board Member in accordance with this Constitution.

“**Establishment BAP**” or, Establishment Board Appointments Panel, means the panel described in Rule 29.1 (Establishment BAP).

“**FIBA**” means the Fédération Internationale de Basketball which is the international organisation governing basketball throughout the world and is recognised as such by the International Olympic Committee.

“**General Meeting**” means an AGM or a SGM of BBNZ.

“**Life Member**” has the meaning specified in Rule 10.1 (Life Members).

“**Members**” has the meaning specified in Rule 7.1 (Members).

“**New Board**” has the meaning specified in Rule 29.9.

“**Objects**” means the objects of BBNZ as specified in Rule 5 (Objects).

“**Officers**” means the Patron and all Board Members.

“**Patron**” means the individual elected under Rule 21 (Patron).

“**Previous Constitution**” means the constitution of BBNZ that was registered on the Register of Incorporated Societies & Trusts immediately prior to this Constitution coming into force.

“**Proxy**” means a person who is authorised to act as the agent for an Affiliated Association at a General Meeting and to exercise that Affiliated Association’s votes on their behalf.

“**Regulations**” means any regulations determined by BBNZ;

“**Rule**” means a rule of this Constitution.

“**SGM**” means a Special General Meeting of BBNZ as described in Rule 14.1 (General Meetings).

“**SPARC**” means Sport and Recreation New Zealand, the Crown agency established under the Sport and Recreation New Zealand Act 2002.

“**Special Resolution**” means a resolution passed by two-thirds of the votes properly cast by those present and entitled to vote.

“**Sports Tribunal**” means the Sports Tribunal of New Zealand established by SPARC and continued under the Sports Anti-Doping Act 2006 (previously known as the Sports Disputes Tribunal of New Zealand).

“Transition Board Chairperson” means the person described in Rule 29.5 (Transition Board Chairperson).

“Transition Period” means the period from the date this Constitution comes into force until the New Board is established as described in Rule 29.9 (New Board).

“World Anti-Doping Agency” means the foundation constituted under the Swiss Civil Code in Lausanne on 10 November 1999.

“Voting Member” means every Affiliated Association (unless Rule 15.2 – Financially Current applies), Officer, and Life Member.

1.2 Interpretation: In this Constitution:

- a. the singular includes the plural and vice-versa;
- b. any reference to legislation includes a modification or re-enactment of, legislation enacted in substitution of, or a regulation, order-in-council or other instrument from time to time issued or made under, that legislation;
- c. any agreement includes that agreement as modified, supplemented, novated or substituted from time to time;
- d. any obligation not to do something includes an obligation not to suffer, permit, or cause that thing to be done;
- e. a reference to persons includes bodies corporate;
- f. a reference to a person includes the legal and personal representatives, successors and permitted assignees of that person; and
- g. headings and the contents page are for reference only and are to be ignored in interpreting this Constitution.

2. Name

- 2.1 **Name:** The name of the organisation is "Basketball New Zealand Incorporated"; and may be variously referred to as "Basketball New Zealand" or "BBNZ".

3. Registered Office

- 3.1 **Registered Office:** The registered office of BBNZ shall be such location as may be determined by the Board from time to time; and as at the date of the adoption of this Constitution is Level 4, Credit Consultants House, Church Street, Wellington.

4. Status

- 4.1 **Legal:** BBNZ is an incorporated society established under the Incorporated Societies Act 1908. As at the date of the adoption of this Constitution BBNZ is also a registered charity in New Zealand under the Charities Act 2005.
- 4.2 **New Zealand:** BBNZ is the controlling body in New Zealand for basketball and is recognised as such by the FIBA and SPARC.

- 4.3 **FIBA Member Federation:** BBNZ is the national member federation of FIBA for New Zealand. As such BBNZ must observe the General Statutes, Internal Regulations, the Official Basketball Rules, and other rules, regulations and decisions of FIBA.
- 4.4 **FIBA Zone:** BBNZ is a member of the zone to which it is assigned by the FIBA Central Board, which is currently FIBA Oceania. BBNZ must enforce decisions of FIBA Oceania provided these do not conflict with the General Statutes, Internal Regulations, other rules and regulations, and decisions of FIBA.
- 4.5 **Order of Priority:** If:
- a. any matter is not provided for in this Constitution or the Regulations but is provided for in the FIBA General Statutes or the FIBA Internal Regulations then the requirements of FIBA shall apply; and
 - b. there is any conflict between this Constitution or the Regulations and the FIBA General Statutes or the FIBA Internal Regulations, the requirements of FIBA shall prevail.

5. Objects

- 5.1 The objects of BBNZ are as follows:
- a. To develop a governance structure for BBNZ capable of delivering to all Members services desirable or necessary to achieve all the Objects set out in these rules from time to time.
 - b. To promote, foster and develop the game of basketball in New Zealand and the skill of participants in the game.
 - c. To further the education of all persons by encouraging and enabling their participation and involvement in basketball in New Zealand.
 - d. To ensure the game of basketball is a clean, modern and inclusive activity.
 - e. To enhance the links the game has with its national and international stakeholders, its participants and the community.
 - f. To promote the “Tall Blacks” and “Tall Ferns” and “Koru” brands.
 - g. To field representative teams in FIBA, Olympic, Oceania and invitational competitions.
 - h. To promote visits of overseas basketball teams to New Zealand and to organise, promote and exercise jurisdiction over all New Zealand representative teams including development teams playing within or outside New Zealand.
 - i. To apply for and maintain membership of the International Basketball Federation (FIBA) or any other international basketball association or organisation.

- j. To develop and provide a national tournament and league programme, a player development programme, officials and administrators development programmes and a high performance programme suitable for its Members and achievement of the Objects.
- k. To do all such other things as BBNZ, in its absolute discretion, considers necessary or desirable to promote the interest of basketball and to attain the strategic objects and aims of BBNZ.
- l. To promote observance of the ethical principles contained in this Constitution in all aspects of the game.
- m. To protect the recognition by FIBA of BBNZ as the only national basketball administration in New Zealand.

6. Powers

- 6.1 BBNZ shall have all the powers of a natural person that are necessary to enable it to carry out its Objects, including:
 - a. **Rules:** to make or alter rules or Regulations in accordance with this Constitution; and
 - b. **Membership:** to admit new Members and withdraw, suspend or terminate membership, or impose set penalties for the breach of any rule or Regulation of BBNZ or the bringing of the BBNZ or basketball into disrepute by any Member, club, referee, team, Affiliated Association, or member of such club or team or Affiliated Association.

7. BBNZ's Members

- 7.1 **Members:** The Members of BBNZ shall comprise:
 - a. the Officers and Life Members of BBNZ;
 - b. each Affiliated Association;
 - c. every player, coach, referee, bench official and administrator of each Affiliated Association, provided that each such member shall be deemed to have assigned the right to directly share in the administration of BBNZ to the Affiliated Association in which the said member is associated as aforesaid;
 - d. each Associate Member; and
 - e. every person who is a member of an Associate Member, provided that each such person shall be deemed to have assigned any rights of membership of BBNZ, to the Associate Member in which the person is a member.
- 7.2 **Rights & Obligations:** The respective rights and obligations of each class of member of BBNZ, as previously recorded, shall be determined in accordance with the terms of this Constitution.

- 7.3 **Binding:** Each Member is bound by this Constitution and rules and regulations set out in the BBNZ Board Operations and Procedures Manuals from time to time and all Members must recognise BBNZ as having the final right to determine all disputes in relation to basketball in terms of this Constitution and these rules and regulations.
- 7.4 **Non-Profit:** No Member or person associated with a Member of BBNZ shall derive any income, benefit or advantage from BBNZ where they can materially influence the payment of the income, benefit or advantage except where that income, benefit or advantage is derived from:
- a. professional services to BBNZ rendered in the course of business charged at no greater rate than current market rates; or
 - b. interest on money lent at no greater rate than current market rates.
- 7.5 **Perpetual:** The provisions and effect of Rule 7.4 (Non-Profit) shall not be removed from this Constitution and shall be included and implied into any document replacing this Constitution.

8. Affiliated Associations

- 8.1 **Affiliated Association:** An Affiliated Association is a basketball organisation that is recognised by the Board as having administrative competence; financial stability; and its admission as an Affiliated Association will contribute to the achievement of the Objects.
- 8.2 **No Other Affiliation:** Affiliated Associations may not be affiliated to any basketball organisation other than BBNZ; or to a regional basketball organisation.
- 8.3 **No Playing with Non-Affiliated Associations:** Each Affiliated Association must ensure that no basketball team under its control or jurisdiction plays any team under the control or jurisdiction of any entity, which is not a BBNZ Member including without limitation any team under the control or jurisdiction of an overseas entity, without the prior written consent of the Board.
- 8.4 **Remaining an Affiliated Association:** To be a Member, and to remain an Affiliated Association; an Affiliated Association must:
- a. continue to meet the Board's criteria for a new Affiliated Association under Rule 11.2a (Affiliated Association);
 - b. have complied with its obligations under Rule 8.5 (Affiliated Association Information);
 - c. have paid any Membership Fees in terms of Rule 13 (Membership Fees) by the due date(s); and
 - d. adopt as its annual financial date a date between 30 August and 31 December in each year.

8.5 **Affiliated Association Information:** In respect of each financial year each Affiliated Association must forward to BBNZ the following information by 31 January immediately following its balance date:

- a. **Annual Report:** a copy of its annual report and statement of accounts, including balance sheet and income and expenditure account, relating to the preceding financial year;
- b. **Participant Database:** a list, in the form provided by BBNZ, containing the names of all players, coaches, referees or table officials that have participated in that Affiliated Association's basketball activities in the preceding year;
- c. **Up to date contact details:** up to date contact details, including, if available, an email address, for the Affiliated Association; and
- d. **Other Information:** such other information on the Affiliated Association's affairs as may from time to time be required by the Board.

9. Associate Membership

9.1 **Associate Member:** An Associate Member is an organisation that participates in the education or sporting sector, and is recognised by the Board as having administrative competence; financial stability; and its admission as an Associate Member will contribute to the achievement of the Object of the BBNZ being the enhancement of its links the game has with its national and international stakeholders, its participants and its community.

9.2 **New Associate Members:** The Board may from time to time remove any existing Associate Member; or appoint a new Associate Member(s).

9.3 **Membership Fee:** To be an Associate Member and remain eligible for membership of BBNZ an Associate Member must pay any membership fees, established by the Board in terms of Rule 13 (Membership Fees), by the due date.

10. Life Members

10.1 **Life Members:** Life Members are persons appointed as Life Members in recognition of outstanding contribution to basketball or basketball administration within New Zealand.

10.2 **Nomination:** Any Affiliated Association or Board Member may nominate a person as a Life Member. Such nomination shall be in writing and shall be delivered to the CEO of BBNZ not later than the 30th day of November in any year. Such nominations shall include a citation of the services of the nominated person to the sport of basketball.

10.3 **Appointment:** A person may be elected as a life member of BBNZ:

- a. at an AGM with the prior approval of the Board;
- b. to be elected as a Life Member a majority of three quarters of the votes cast shall be required.

- 10.4 **Rights:** Life Members:
- a. may with or without notice attend any General Meeting of BBNZ, take part in any discussion at any such meeting and be entitled to one vote; and
 - b. shall not be liable for the payment of any membership fees.
- 10.5 **Termination:** The membership of a Life Member may be terminated by a majority decision of BBNZ at a General Meeting.

11. **New Affiliated Associations**

- 11.1 **Application for Membership:** Application for membership of BBNZ as an Affiliated Association or an Associate Member must be made as follows:
- a. **Affiliated Association:** any basketball organisation wishing to become an Affiliated Association and any existing Affiliated Association wishing to amalgamate with the other basketball organisation must submit an application complying with Rule 11.2a (Affiliated Association) to the CEO; and
 - b. **Associate Member:** any organisation wishing to become an Associate Member must submit an application complying with Rule 11.2b (Associate Members) to the CEO.
- 11.2 **Form of Application:** Applications for membership to BBNZ as an Affiliated Association or an Associate Member, or for the amalgamation of an Affiliated Association with another organisation must comply with the following requirements:
- a. **Affiliated Association:** Applications for membership to BBNZ as an Affiliated Association or for amalgamation of an existing Affiliated Association with another organisation must:
 - i. be made by the organisation seeking to become an Affiliated Association;
 - ii. contain a list of the names of all persons who have participated in the applicant's basketball activities as a player in the last 12 months which must be a number of at least 70 different persons;
 - iii. include details of the governance and membership structure of the applicant and a copy of the applicant's rules or constitution;
 - iv. include a copy of the financial statements of the applicant for the 12 months ending on the balance date of the applicant immediately preceding the date of the application including a statement of financial position and an income and expenditure statement or, if the applicant was formed less than 12 months before the application, a copy of the applicant's projected statement of financial position and projected income and expenditure statement for the 12 months commencing from the date of the application;
 - v. in the case of a basketball organisation that operates in close proximity to an existing Affiliated Association, include a suggested protocol for the co-operation and co-ordination between the proposed Affiliated Association and the existing Affiliated Association; together with confirmation that a copy of the application and the draft protocols has been sent to such neighbouring Affiliated

Association with advice that that Affiliated Association should provide any comments that it has on the application for the admission of the applicant as an Affiliated Association to BBNZ within 28 Days; and

- vi. contact details for the proposed Affiliated Association which must include an e-mail address, if available.

Provided that the Board can either waive any of the above requirements; or require further or additional information to be provided by the applicant or any existing Affiliated Association.

- b. **Associate Members:** Applications for membership of BBNZ as an Associate Member must:
 - i. be made by the organisation seeking to become an Associate Member; and
 - ii. include all of the information referred to in Rules 11.2a.iii and 11.2a.vi (Affiliated Association) as if every reference to an "Affiliated Association" in those Rules is to an Associate Member, in respect of the application.

11.3 **Board Consideration:** The Board shall consider any application to be an Affiliated Association, or Associate Member; and may approve any application if the Board considers in its sole discretion that the applicant:

- a. to be an Affiliated Association, is a basketball organisation that has administrative competence, is financially sound; and its admission will promote the achievement of the Objects of BBNZ;
- b. in the case of the amalgamation of Affiliated Associations or of an Affiliated Association with another organisation(s) will lead to the establishment of a basketball organisation that has organisational competence; is financially sound, and that membership will enhance the promotion of the Objects; and
- c. in the case of an Associate Member is an organisation and the associate membership will enhance the links the game of basketball has with its national or international stakeholders, participants or community.

12. Non Compliance by Members

12.1 **Non Compliance:** Any Member disobeying any Rule or Regulation or failing to give effect to any decision of the Board or, in the case of an Affiliated Association or Associate Member, permitting any Member under its jurisdiction to do so, shall be liable to:

- a. **Suspension:** suspension for a period; and/or
- b. **Expulsion:** expulsion; and/or
- c. **Other:** such other punishment (including the imposition of any penalty or fine),

as the Board in its sole discretion imposes.

13. Membership Fees

- 13.1 **Fees and Levies established by Board:** Each year the Board shall determine the category and quantum of fees and/or levies payable by Members for the financial year following the year in which the AGM is held.
- 13.2 **AGM Approval:** The fees and/or levies proposed by the Board shall be recommended to the AGM by the Board.
- 13.3 **Payable by 1 March:** Upon approval by the AGM the fee and/or levy shall be payable by each Member to BBNZ, by 1 March in the financial year to which the fee or levy relates; or by such other date(s) in that year as approved by the AGM held in the previous year.

14. Meetings of Members

- 14.1 **General Meetings:** BBNZ must hold an annual meeting of the Members once in each calendar year on a date to be fixed by the Board ("AGM"). Any other general meeting of the Members shall be a Special General Meeting ("SGM").
- 14.2 **Business:** The AGM shall:
- a. **Roll Call:** commence with a roll call and an announcement to the meeting of the number of Members present; and the total votes able to be cast at the meeting;
 - b. **Board Report:** receive the Board's report and statement of accounts for the past year;
 - c. **Elect:** elect the Patron and any vacancies arising in positions of Elected Board Members;
 - d. **Auditor:** appoint an auditor in accordance with Rule 25.2 (Audit);
 - e. **Membership fees:** consider the recommendation of the Board for the type and quantum of membership fees and/or levies payable and the due dates for payment, for the financial year following the year in which the AGM is held; and approve the type and quantum and due date for such fees and/or levy(ies) whether as presented to the meeting or amended by resolution of the meeting;
 - f. **Other Notified Business:** consider any other business of which at least 30 Days' notice has been given in writing to the CEO; and
 - g. **General Business:** consider any other business for discussion only.
- 14.3 **Convening SGM:** A SGM may be called at any time by the Board or shall be called by the CEO on receipt of a requisition stating the objects of such meeting signed on behalf of not less than one-fourth of the Affiliated Associations. In the event there are insufficient Board Members to achieve a quorum the Board may still call a SGM.
- 14.4 **Time of SGM:** SGMs shall be held not more than 30 Days' after the day on which the Board calls for a SGM or on which the requisition was received by the CEO, as the case may be.
- 14.5 **Notices of Meeting:** The CEO shall give not less than 20 Days' notice to all Affiliated Associations, Associate Members, Officers and Life Members of all business which is to be considered at any General Meeting, and of the time, date and place of the General Meeting.

- 14.6 **Attendance at General Meetings:** The following persons may attend General Meetings:
- a. **Delegates:** up to 2 Delegates representing each Affiliated Association may attend, speak at and vote at General Meetings;
 - b. **Officers, and Life Members:** Officers and Life Members may attend, speak at and vote at General Meetings; and
 - c. **Associate Members:** other non-delegate representatives of Affiliated Associations, observers, and persons invited by the Board to attend, may attend General Meetings and will be entitled to speak if invited to do so by the chairperson of the General Meeting but are not entitled to vote.
- 14.7 **Delegates:** If an Affiliated Association is to be represented at a General Meeting by one or more delegates (“Delegates”), the following will apply:
- a. **Notice:** Notice of the appointment of a Delegate, signed by an authorised representative of the Affiliated Association whom the Delegate represents, must be received by the CEO not less than 3 Days’ before the date of the General Meeting at which the Delegate is to act. In exceptional circumstances an Affiliated Association may replace their nominated Delegate(s) by written notice to the CEO signed by an authorised representative of that Affiliated Association. If a Delegate is replaced by an Affiliated Association less than 3 Days’ before the date of the General Meeting at which the Delegate is to act, the chairperson of the General Meeting will inform the meeting;
 - b. **Votes:** Any one or more Delegate may exercise all of the votes to which the Affiliated Association that the Delegate represents is entitled to exercise;
 - c. **Votes need not be Cast in Same Way:** An Affiliated Association need not cast all of its votes in the same way; and
 - d. **Delegates’ Powers:** Delegates have the right to consider and, if entitled to vote, amend, pass or reject motions relating to any matters in respect of which proper notice in accordance with this Constitution has been given.
- 14.8 **Methods of Holding Meetings:** General Meetings are held by a meeting of the persons entitled to attend in person.
- 14.9 **Notice Irregularity:** Any irregularity in the notice of a General Meeting or conduct or procedure is waived if there is no protest from any of the entitled persons attending the Meeting as to the irregularity; or if all entitled persons attending the Meeting agree to the waiver.
- 14.10 **Powers Exercisable by Ordinary Resolution:** Unless otherwise specified in this Constitution, a power or right reserved to Members entitled to vote at a General Meeting may be exercised by simple majority vote of votes cast by Voting Members (entitled to vote and present at the General Meeting) (with more than 50% of required votes cast in favour).

15. **Votes of Members**

- 15.1 **Voting Entitlements of Affiliated Associations:** At General Meetings, Affiliated Associations which have at least one Delegate present (in person or by appointing a Proxy) shall be entitled to the number of votes determined in accordance with the following formula and based on the player list provided by that Affiliated Association to BBNZ pursuant to Rule 11.2a (Affiliated Association) for the calendar year (or any part of it) immediately preceding the year in which the General Meeting is being held:
- a. up to 499 players - 2 votes;
 - b. between 500 and 999 players - 3 votes;
 - c. between 1000 and 1999 players - 4 votes; and
 - d. above 2000 players - 5 votes.
- 15.2 **Financially Current:** Notwithstanding anything else contained in this Constitution an Affiliated Association which has not paid the BBNZ membership fees or levies applicable to it; by the due date(s) occurring before the Meeting, shall not be entitled to any votes at a General Meeting.
- 15.3 **No Player List Supplied:** Notwithstanding the provisions of Rule 15.1 (Voting Entitlements of Affiliated Associations), if an Affiliated Association has not provided a list to BBNZ in accordance with Rule 8.5b (Participant Database) for any part of the calendar year in the year before the General Meeting is held, then that Affiliated Association shall, if it has at least one Delegate present at a General Meeting, be entitled to 2 votes at the General Meeting.

16. **Proceedings at Meetings of Members**

- 16.1 **Quorum:** No business may be transacted at any General Meeting if a quorum is not present. A quorum for a General Meeting is present if Delegates from one half of the Affiliated Associations that are not disqualified from voting in terms of Rule 15.2 (Financially Current).
- 16.2 **Chairperson:** The chairperson of all General Meetings will be the Chairperson or, if absent, the Deputy Chairperson or, in the absence of both, a person decided by the Board.
- 16.3 **Casting Vote:** The Chairperson shall not have a casting vote. The chairperson may exercise a deliberative vote(s) if the chairperson has the right to vote.
- 16.4 **Regulation of Procedure:** The chairperson of a General Meeting shall regulate the proceedings at that General Meeting.
- 16.5 **Powers to Adjourn Meetings:** The Chairperson:
- a. **Discretion to Adjourn:** may adjourn the meeting from time to time and from place to place; and
 - b. **Direction from the Meeting:** shall adjourn the meeting if so directed by the meeting.

No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 Days or more, notice of the adjourned meeting must be given as in the

case of an original meeting, but otherwise it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16.6 **Scrutineers:** For each General Meeting at least two witness scrutineers shall be appointed by the meeting to keep a record of and count votes cast at the General Meeting.

16.7 **Voting:** Voting at General Meetings may be by voice, a show of hands, or ballot as follows.

a. **Voting by Voice or Show of Hands:** If no objection is voiced voting will be carried out by voice. Where voting is to be by voice, the Chairperson must call for votes in favour of the resolution to be voiced, and then call for votes against the resolution to be voiced. If votes are voiced for and against the resolution a voting Member may, before or after the result is declared by the Chairperson, request that the voting be by a show of hands or by ballot in accordance with the next Rule 16.7b (Voting by Ballot) .

b. **Voting by Ballot:** if there is an objection voiced, the Chairperson will propose a resolution that voting be by roll. If voting is by roll, the scrutineers must record the votes at the General Meeting in respect of each resolution as follows:

i. votes cast whether by show of hands or in writing, will be counted by the scrutineers who will deliver to the Chairperson a certificate setting out the number of votes cast in favour and against the resolution; and

ii. the Chairperson will convey the result (but not in the case of a vote for election to office the numbers of votes for each candidate received) of the poll to the General Meeting.

c. **Pecuniary Interest:** The Chairperson may in their sole discretion disallow any vote of a person who has a pecuniary interest in the subject matter of a resolution that has been put to the vote.

16.8 **Proxy Votes:** A Voting Member shall be entitled to vote by written proxy in favour of another Voting Member; but no other proxy voting shall be permitted.

16.9 **Election of Board Members:** For the election of Elected Board Members, only candidates on the shortlist prepared by the BAP under Rule 18.4g (Responsibilities of the BAP) shall be considered, and the following process shall apply:

a. **Secret Ballot:** the election shall be decided by secret ballot;

b. **Highest Polling:** the highest polling candidate or number of candidates equal to the number of Board Members required to be elected, shall be the successful candidates. If there is a tied vote and a position is still required to be filled, then there shall be a second vote for the vacant position in which the only candidates to be voted on shall be the candidates with the tied vote in the first round vote;

c. **Multiple Vacancies:** if there is more than one vacancy in the number of Board Members to be voted for, then all candidates shall be put to the vote at the same time; and

d. **Insufficient Candidates:** if there are insufficient applications for available position(s) then the position(s) shall remain vacant and shall be treated as a Casual Vacancy.

- 16.10 **Validity of Votes:** In the case of any dispute as to the admission or rejection of a vote at a General Meeting, the Chairperson will determine the same and such determination will be conclusive.

17. **BBNZ Board**

- 17.1 **Composition:** Except where Rule 29.4 (Transition Board) or Rule 29.9 (New Board) applies, or where a Casual Vacancy arises during an incumbent Board Member's term of office, the Board shall consist of:
- a. 4 Appointed Board Members; and
 - b. 4 Elected Board Members.
- 17.2 **Role of the Board:** The Board is responsible for governing BBNZ. Subject to this Constitution, the Board may exercise all the powers of BBNZ and do all things that are not expressly required to be undertaken at a General Meeting.
- 17.3 **Chairperson:** Except where Rule 29.5 (Chairperson of the Transition Board) or Rule 29.9h (New Board) applies, at the first Board meeting following each AGM, the Board shall appoint a chairperson of the Board from amongst the Appointed Board Members ("Chairperson"). The role of the Chairperson is to chair meetings of the Board and to publicly represent the Board and BBNZ. If the Chairperson vacates office as the Chairperson (whether or not they remain on the Board), the Board shall appoint a new Chairperson from amongst the Appointed Board Members unless Rule 29.7 (Board Vacancy During Transition Period) or Rule 29.9 (New Board) applies.
- 17.4 **Deputy Chairperson:** Except where Rule 29.5 (Chairperson of the Transition Board) or Rule 29.9h (New Board) applies, at the first Board meeting following each AGM the Board shall appoint a deputy chairperson of the Board from amongst the Board Members ("Deputy Chairperson"). The Deputy Chairperson may exercise all of the functions and powers of the Chairperson in relation to a matter if:
- a. the Chairperson is unavailable; or
 - b. the Chairperson has a conflict of interest in the matter.
- 17.5 **Resignation:** The Chairperson or Deputy Chairperson may, without resigning as a Board Member, resign from being the Chairperson or Deputy Chairperson (as applicable) by written notice to the Board. The notice of resignation must state the date on which the resignation takes effect.
- 17.6 **Relegation:** Except where Rule 29.5 (Chairperson of the Transition Board), Rule 29.9a or Rule 29.9h (New Board) applies, the Board may agree that the Chairperson shall be relegated to be a Board Member but not the Chairperson provided that at least two-thirds of all Board Members agree and provided that:
- a. the Chairperson is notified that a Board meeting is to be held to discuss their relegation from office as the Chairperson; and
 - b. the Chairperson is given an opportunity to make submissions about the proposed motion to the Board in writing prior to the Board meeting and/or by submission in person at the Board meeting.

- 17.7 **Temporary Chair:** The Board may, by resolution, appoint a temporary chairperson from amongst their number, who may exercise all the functions and powers of the Chairperson in relation to a matter if:
- a. there is no Deputy Chairperson; or
 - b. the Deputy Chairperson is unavailable; or
 - c. the Deputy Chairperson has a conflict of interest in the matter.
- 17.8 **Term of Office of Board Members:** Except for the Transition Board (Rule 29.4), the term of office of each Board Member is 4 years. Except for the New Board (Rule 29.9), the term of office of each Elected Board Member shall commence at the conclusion of the General Meeting at which they are elected and the term of office of each Appointed Board Member shall commence on a date determined by the BAP, which shall usually be at the conclusion of a General Meeting. This Rule is subject to: Rule 17.18 (Casual Vacancies), Rule 17.20 (Removal of Board Member(s) at a SGM), Rule 17.21 (Removal of a Board Member by the Board), and any schedule of rotation made under Rule 17.18 (Schedule of Rotation) or Rule 29.9i (New Board), which may reduce the term of office of Board Members.
- 17.9 **Maximum Duration in Office:** An individual may serve on the Board for 2 successive terms of office for a maximum of 8 consecutive years, unless:
- a. the individual was elected or appointed to the Board under Rule 29.9 (New Board) ;
and
 - b. that individual was required to vacate office within 12 months of commencing as a Board Member under the schedule of rotation determined under Rule 29.9i (New Board);
- in which case they may be elected or appointed for a maximum of 2 further consecutive terms after their initial term.
- 17.10 **Appointment of Board Members:** Except where Rule 29 (Transition Rules) applies, the BAP shall appoint Appointed Board Members as described in Rule 18.4 (Responsibilities of the BAP).
- 17.11 **Election of Board Members:** Except where Rule 29 (Transition Rules) applies, Elected Board Members are elected at a General Meeting as described in this Constitution.
- 17.12 **Application to be a Board Member:** Every person seeking appointment or election to the Board must complete the application form prescribed by the BAP and indicate whether they are seeking appointment, election, or either (provided that they are eligible to do so – see Rule 17.13 (Ineligibility of Appointed Board Members), Rule 17.14 (Ineligibility of Elected Board Members) and Rule 17.16 (Ineligibility of Board Members)).
- 17.13 **Ineligibility of Appointed Board Members:**
- a. Subject to Rule 17.13c, a person shall **not** be eligible to be appointed as an Appointed Board Member if that person currently has, or has in the preceding 4 years had, any material interest or material involvement in basketball.

- b. An Appointed Board Member shall become ineligible to continue in office as a Board Member if during their term of office they obtain a material interest or material involvement in basketball, other than as an Appointed Board Member or as described in Rule 17.13c.
- c. An Appointed Board Member who is appointed by the Board as a BBNZ appointee to a position which would otherwise put them in breach of Rule 17.13a shall continue to be **eligible** to be a Board Member.

17.14 Ineligibility of Elected Board Members:

- a. Subject to Rule 17.14b and Rule 17.14c, a person shall **not** be eligible to be elected as an Elected Board Member if the person is, an employee, contractor or officer of:
 - i. BBNZ;
 - ii. an Affiliated Association;
 - iii. an Associate Member;
 - iv. any other organisation in which BBNZ holds a controlling interest, including but not limited to holding shares or having the power of appointment of directors or other controlling interest; or
 - v. any other organisation which the BAP considers may give rise to a significant conflict of interest for that person.
- b. A person **is eligible** to be an Elected Board Member if they cease (by resignation or otherwise) to be an employee, contractor or officer of any organisation listed in Rule 17.14a, from the date they commence their term of office as an Elected Board Member.
- c. An Elected Board Member who is appointed by the Board as a BBNZ appointee to a position which would otherwise put them in breach of Rule 17.14a shall continue to be **eligible** as a Board Member.

17.15 BAP Determination: The BAP has the power to determine whether a person is eligible under Rule 17.13 (Ineligibility of Appointed Board Members) or 17.14 (Ineligibility of Elected Board Members) and the BAP's decision will be final.

17.16 Ineligibility of Board Members: In addition to Rule 17.13 (Ineligibility of Appointed Board Members) and Rule 17.14 (Ineligibility of Elected Board Members), a person shall **not** be eligible to be appointed, elected, or to remain in office as a Board Member if they are, or become:

- a. **Bankrupt:** a person who is a bankrupt who has not obtained a final order of discharge or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled, or to any order under section 299 of the Insolvency Act 2006;
- b. **Offence:** a person who has been convicted of an offence and has been sentenced to a term of imprisonment of 3 months or more, unless that person has obtained a pardon or has served the sentence;

- c. **Disqualified Director:** a person who is prohibited from being a director of, or being concerned or taking part in, the management of, an incorporated or unincorporated body under the Companies Act 1993, Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or from being an officer of a charitable entity under the Charities Act 2005;
 - d. **Property Order:** a person who is subject to a property order made under sections 30 or 31 of the Protection of Personal and Property Rights Act 1988; or
 - e. **Incapacity:** a person who becomes mentally incapable as defined in the Protection of Personal and Property Rights Act 1988.
- 17.17 **Cessation of Office:** If any of the circumstances listed in Rule 17.13 (Ineligibility of Appointed Board Members), Rule 17.14 (Ineligibility of Elected Board Members) or Rule 17.16 (Ineligibility of Board Members) apply to a Board Member, that Board Member shall be deemed to have vacated his or her office as soon as the circumstance applies. This Rule does not limit the right to suspend a Board Member under Rule 17.22 (Suspension of Board Member).
- 17.18 **Schedule of Rotation:** Except for the New Board (Rule 29.9i), if 4 or more Board Members vacate office at the conclusion of the same AGM, the Board shall decide, at the first Board meeting following the AGM a schedule of rotation to ensure that at least one Elected Board Member and one Appointed Board Member vacate their office at successive AGMs. The Board shall advise the CEO of the schedule of rotation who shall in turn advise the Voting Members of the vacancies that will arise in Board Member positions prior to the AGM.
- 17.19 **Casual Vacancies:** If a Casual Vacancy arises on the Board, then the Board shall undertake one of the following:
- a. call a SGM and request the BAP to seek applications to fill the Casual Vacancy if it is a vacancy of a position held by an Elected Board Member; or
 - b. direct the BAP to fill the vacancy if it is a vacancy of a position held by an Appointed Board Member; or
 - c. leave the Casual Vacancy unfilled until the next AGM, provided that there are sufficient remaining Board Members to enable Rule 19.5 (Quorum) to be complied with.

In the event a position is filled under this Rule then the term of office for the person filling the vacancy shall be the balance of the term of office of the vacating Board Member (unless specified otherwise in this Constitution).

- 17.20 **Removal of Board Member(s) at a SGM:** Voting Members at a SGM called for this purpose may, by Special Resolution, remove any Board Member(s) or the Board as a whole, before the expiry of their term of office. The following procedure shall apply:
- a. upon the CEO receiving a request (provided it has been made in accordance with Rule 14.3 – Convening SGM) to call a SGM to remove any Board Member(s), or the Board as a whole, the CEO shall send the notice of the SGM to the Board Member(s) concerned or the Board (as the case may be), and the persons specified in Rule 14.5 (Notices of Meeting); and

- b. following notification under Rule 17.20a and before voting on the motion to remove any Board Member(s), or the Board as a whole, the Board Member(s) or the Board (as the case may be) affected by the proposed motion shall be given the opportunity prior to the SGM to make submissions in writing to the Members about the proposed motion.

17.21 **Removal of a Board Member by the Board:** The Board may, with the approval of a motion by no less than two-thirds of the Board, remove any Board Member from the Board, before the expiry of their term of office if the Board considers the Board Member concerned has seriously breached their duties as specified in Rule 20.2 (Duties of Board Members) such that immediate removal is considered appropriate. Before considering such a motion the following procedure shall apply:

- a. the Board Member concerned shall be notified that a Board meeting is to be held to discuss the proposal to remove the Board Member from office; and
- b. the Board Member concerned shall be given an opportunity to make submissions about the proposed motion to the Board in writing prior to the Board meeting and/or by submission in person at the Board meeting.

17.22 **Suspension of Board Member:** If any Board Member is alleged to have, or is charged with, or is given notice by the relevant authority of a proposal to make an order or finding against that Board Member of any of the circumstances described in 17.13 (Ineligibility of Appointed Board Members), Rule 17.14 (Ineligibility of Elected Board Members) or Rule 17.16 (Ineligibility of Board Members), the remaining Board Members may, after reasonable enquiry and giving the Board Member concerned the right to be heard, suspend the Board Member from the Board pending the determination of such allegation, notice or charge.

18. **Board Appointments Panel**

18.1 **Composition:** Except where Rule 29.1 (Establishment BAP) applies, the Board Appointments Panel (“BAP”) shall consist of the following 4 people:

- a. a person with expertise in sports governance chosen by SPARC and approved by the Board who shall Chair the BAP (“BAP Chair”);
- b. a person not currently on the Board with expertise in sports governance nominated by the Board and approved by SPARC;
- c. an incumbent Elected Board Member chosen by the Board who is not seeking re-election or appointment to the Board. If all Elected Board Members are seeking re-election then a person shall be chosen by the Board from amongst those Board Members who are not seeking re-election or re-appointment; and
- d. a person, chosen by the Board with experience in basketball and an understanding of governance who is not currently on the Board.

18.2 **Independence from Board:** Except as permitted under Rule 18.1c, the BAP shall at all times be independent from the Board and shall operate free from any Board interference.

18.3 **BAP Appointment Period:** The BAP shall be convened by BBNZ for such a period as required to carry out its functions in accordance with this Constitution. A person may be re-appointed to the BAP for further periods without limitation.

- 18.4 **Responsibilities of the BAP:** Except where Rule 29.1 (Establishment BAP) applies, the BAP shall be responsible for:
- a. consulting with the Chairperson and the CEO regarding the composition of the Board and identifying any potential needs or skill gaps on the Board;
 - b. determining whether a person is eligible in accordance with Rule 17.15 (BAP Determination);
 - c. determining the information to be provided by candidates seeking a position on the Board;
 - d. advertising any vacancies on the Board and encouraging any persons the BAP considers may be suitable to apply for positions on the Board;
 - e. receiving and assessing applications from candidates seeking a position on the Board, including holding interviews, having meetings, and undertaking such enquiries as the BAP Chair considers appropriate;
 - f. deciding the candidates to be appointed as Appointed Board Members and confirming the date upon which they shall commence their term of office, which shall usually be at the conclusion of the next AGM (unless the appointment has been made to fill a Casual Vacancy);
 - g. preparing a shortlist of the candidates the BAP considers are suitable to stand for election to the Board, which should generally consist of up to 3 candidates for each vacancy; and
 - h. such other matters as set out in any applicable Regulations.
- 18.5 **Ineligibility:** No person will be eligible to be a member of the BAP, or to remain on the BAP, if any of the circumstances listed in Rules 17.16 (Ineligibility of Board Members) have occurred, or occur to that person, as if every reference to a “Board Member” in those Rules is to a person seeking to be a member of the BAP. In addition, no person who is seeking appointment or election to the Board may serve on the BAP.
- 18.6 **Vacancies:** Any Casual Vacancy that arises on the BAP shall be filled with a replacement member to be appointed by the organisation that appointed the vacated position.
- 18.7 **Board Unable to Appoint:** If the Board as a whole has been removed, resigns en masse or does not have a quorum and is therefore unable to make appointments to the BAP those appointments shall be made by an independent professional experienced in governance appointed by SPARC.
- 18.8 **Suitability Criteria for Appointed Board Members:** In making decisions about Appointed Board Members, the BAP shall appoint based on merit and in doing so, at a minimum, take into account the following factors about the candidate and the Board as a whole:
- a. prior governance experience with a proven record of achievement;
 - b. an interest in, and understanding of, the sport of basketball in New Zealand;
 - c. knowledge of, or experience working with, community-based programmes, central and local government agencies, funding bodies, and/or commercial sponsors;

- d. relevant skills, abilities and experiences;
- e. the need for conflicts of interest to be minimised; and
- f. the desire to have a Board that represents the diverse interests of BBNZ and its Members including but not limited to gender, geographical spread of Board Members, community interests, age diversity and interests in various formats of the game of basketball.

18.9 **Suitability Criteria for candidates for Elected Board Members:** In making decisions about candidates to be shortlisted for consideration for election, the BAP shall refer candidates based on merit and in doing so, at a minimum, take into account the following factors about the candidate and the Board as a whole:

- a. experience relevant to a governance role;
- b. recent knowledge of, and experience in, basketball;
- c. knowledge of, or experience working with, community-based programmes, central and local government agencies, funding bodies, and/or commercial sponsors;
- d. relevant skills, abilities and experiences;
- e. the need for conflicts of interest to be minimised; and
- f. the desire to have a Board that represents the diverse interests of BBNZ and its Members including but not limited to gender, geographical spread of Board Members, community interests, age diversity, interests in various formats of the game of basketball.

18.10 **Quorum:** The quorum for a meeting of the BAP is 3 members.

18.11 **Decisions:** Any decision of the BAP regarding the appointment of Appointed Board Members or the shortlisting of candidates for election to the Board must be agreed by a majority of the members of the BAP.

19. **Proceedings of the Board**

19.1 **Notices:** Not less than 5 Days' notice of a Board meeting must be given to Board Members.

19.2 **Irregularity in Notice:** An irregularity in the notice of a meeting is waived if all Board Members entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all the Board Members entitled to receive notice of the meeting agree to the waiver.

19.3 **Adjournment:** A meeting of the Board may be adjourned to such date and place as the meeting shall decide.

19.4 **Method of Meeting:** A meeting of the Board may be held as follows:

- a. **Actual Meeting:** by a number of the members of the Board who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or

- b. **Contemporaneous Linking:** by the contemporaneous linking together by means of audio, or audio and visual, communication by which all members of the Board participating and contributing to a quorum can simultaneously hear each other throughout the meeting.
- 19.5 **Quorum:** The quorum for a Board meeting shall be 4 Board Members. No business may be transacted at a Board meeting if a quorum is not present.
- 19.6 **Number of Votes:** All Board Members have one vote. The Chairperson shall have a deliberative and a casting vote, and if the Chairperson exercises their deliberative vote they must do so at the same time as other Board Members. If the Chairperson does not vote on the motion no casting vote may be exercised.
- 19.7 **Majority:** All matters for decision at Board meetings will be decided by a majority of votes of Board Members present.
- 19.8 **Counting of Votes:** Voting at Board meetings may be by voice or show of hands but if it is desired by any Board Member present, it will be by ballot. Votes cast will be counted and the result declared by the Board Members who shall have been appointed by the Chairperson to act as scrutineers.
- 19.9 **Minutes:** The Board must ensure that minutes are kept of all proceedings at meetings of the Board.
- 19.10 **Resolution in Writing:** A resolution in writing signed by 75% of Board Members is as valid and effectual as if it had been passed at a meeting of the Board duly convened and held provided that the members of the Board signing the resolution would have power to pass such resolution at a meeting of the Board. Any such resolution may consist of several documents in identical form each signed by one or more Board Members. Any such document sent by a Board Member by facsimile transmission or other electronic means approved by the Board is deemed to have been signed by such Board Member.
- 19.11 **Conflicts of Interest:** The Board shall have a conflicts of interest policy for managing any actual or potential conflicts of interest of Board Members.

20. Powers & Duties of the Board

- 20.1 **Powers:** Subject to this Constitution, BBNZ delegates to the Board the governance, stewardship of, and overall policy formulation for, basketball and the management of the affairs of BBNZ; and in particular the Board's following powers as well as those expressly provided elsewhere in this Constitution:
 - a. **Powers of BBNZ:** to exercise any and/or all of the powers of BBNZ other than those required to be exercised by the Voting Members at a General Meeting;
 - b. **Delegate:** to delegate any of its powers to such person or persons as the Board may determine from time to time and on such terms as the Board determines;
 - c. **Sub-Committees:** to appoint sub-committees of the Board, and to delegate any of the Board's powers to any such sub-committee of the Board. The membership, terms of reference and powers of any such sub-committee shall be set out by the Board when the sub-committee or committee is established. A member of a sub-committee need not be a Board Member provided that a person must not be appointed as a

member of a committee unless, before appointment, he or she discloses to the Board the details of any interest the person may have if he or she were a member of that committee;

- d. **Regulations:** to make, repeal, and amend Regulations in accordance with Rule 26 (Regulations), and any policies and procedures as it sees fit, provided that such Regulations, policies and procedures are not inconsistent with this Constitution;
- e. **Disciplinary Matters:** to discipline Members of BBNZ in accordance with this Constitution and any Regulations, or to delegate such power to a disciplinary committee, appropriate FIBA bodies, the Sports Tribunal or CAS;
- f. **Appoint Selectors and Coaches:** to appoint or approve the appointment of selectors, managers or coaches of New Zealand basketball teams (whether representative teams or otherwise) as the Board may decide;
- g. **Affiliated Associations:** to consider and approve or not, and on any terms resolved by the Board, applications from organisations to become an Affiliated Association or an Associate Member;
- h. **Rulings:** to furnish rulings upon the Laws of the Game when requested to do so by an Affiliated Association, provided this is permitted by FIBA;
- i. **Settle Disputes:** to settle disputes between Affiliated Associations when one of the Affiliated Associations which is a party to the dispute requests BBNZ to do so;
- j. **Fees:** to make recommendations of the affiliation fees or Member levies for presentation at the AGM held in that year; and
- k. **Other:** to do all such other things that are necessary to give effect to the Objects of BBNZ.

20.2 **Duties of Board Members:** The duties of each Board Member are to:

- a. at all times, act in good faith and in the best interests of BBNZ;
- b. exercise the powers of the Board for proper purposes;
- c. act, and ensure BBNZ acts, in accordance with this Constitution and its Regulations;
- d. exercise the care, diligence and skill that a reasonable Board Member would exercise in the same circumstances;
- e. disclose to the Board the nature and extent of any interest in a transaction or proposed transaction as soon as the Board Member becomes aware of the fact that he or she has such interest. For the purposes of this Rule, an interest in a transaction or proposed transaction shall have the same meaning as defined in section 139(1) of the Companies Act 1993 (or any equivalent provision under any replacement legislation). Such interest shall also be recorded on the Board's interests register;
- f. take such other steps as determined by the Board in respect of any interest specified in Rule 20.2e, which may include, without limitation, abstaining from deliberations and/or any vote regarding such interest;

- g. not disclose information that the Board Member would not otherwise have available other than in his or her capacity as a Board Member, to any person, or make use of or act on the information except:
 - i. as agreed by the Board for the purposes BBNZ;
 - ii. as required by law; or
 - iii. to persons, or for reasons identical to those specified in sections 145(2) and 145(3) of the Companies Act 1993; and
 - h. make reasonable efforts to attend all Board Meetings and General Meetings of BBNZ.
- 20.3 **Board to Interpret:** If any difference of opinion arises as to the meaning of any Rule in this Constitution it shall be determined by the Board or, if it occurs at a General Meeting, by the Chairperson of that meeting, in each case:
- a. acting in a manner which would best achieve the Objects; and
 - b. in such a manner as it deems expedient.
- 20.4 **Saving:** Subject to Rule 4.5 (Order of Priority), if any matter arises which, in the opinion of the Board, is not provided for in this Constitution, it shall be determined by the Board in the manner it sees fit.
- 20.5 **Ratification:** The purported exercise by a Board Member, the CEO or a sub-committee of the Board of a power vested in the Board may be ratified or approved by the Board. The purported exercise of a power ratified under this Rule is deemed to be, and to always have been, a proper and valid exercise of that power.
- 20.6 **Funds and Investment:** The funds and property of BBNZ shall be controlled, invested and disposed of by the Board subject to this Constitution. The funds shall be devoted solely to the furtherance of the Objects of BBNZ.
- 20.7 **Indemnity of Officers:** Each Board Member, the CEO, the Patron and any other employee or servant of BBNZ (each "Indemnified Party"):
- a. is indemnified by BBNZ from and against all losses and expenses incurred by that Indemnified Party or in or about the discharge of that Indemnified Party's duties; and
 - b. is not liable for the acts or omission of any other person being a Board Member, the CEO, the Patron or any other employee or servant of BBNZ or for joining in any act or receipt or for any act of conformity or for any loss happening to BBNZ;
- unless due to the Indemnified Party's own wilful default.

21. Patron

- 21.1 **Appointment of Patron:** At each AGM the Voting Members shall elect a Patron who should hold that position until the expiry of the following AGM.

22. CEO

- 22.1 **Appointment:** The Board may appoint a Chief Executive Officer of BBNZ for such period and on such terms as it thinks fit (“CEO”).
- 22.2 **Role:** The CEO shall be under the direction of the Board and shall be responsible for the day-to-day management of BBNZ in accordance with the Regulations, policies, and procedures of BBNZ, and with such delegated authority as may be authorised by the Board.
- 22.3 **Board Meetings:** The CEO may attend and speak at all Board meetings, unless otherwise determined by the Board, but shall have no vote.

23. Sports-Related Disputes

- 23.1 **Sports Tribunal:** BBNZ recognises the Sports Tribunal may be the appropriate forum to resolve certain sports-related disputes as set out in the rules of Sports Tribunal. Unless Rule 23.2 (FIBA) or 23.3 (CAS) applies, any Member who or which wishes to appeal a decision of BBNZ regarding any sports-related matter where she/he/it has exhausted their rights of appeal within this Constitution and/or the Regulations of BBNZ, may appeal to the Sports Tribunal. The rules of the Sports Tribunal shall apply to any such appeal.
- 23.2 **FIBA:** BBNZ recognises that the FIBA Basketball Arbitral Tribunal and the FIBA Appeals’ Panel has jurisdiction to hear certain matters or appeals in accordance with the FIBA General Statutes or FIBA Internal Regulations.
- 23.3 **CAS:** BBNZ recognises that the Court of Arbitration for Sport (“CAS”) has jurisdiction to hear certain matters in accordance with the CAS Statutes, either directly or by way of appeal from a local decision.
- 23.4 **Decisions Binding on BBNZ:** Decisions and awards of the Sports Tribunal, FIBA Basketball Arbitral Tribunal and CAS are binding on BBNZ and its Members.

24. Common Seal

- 24.1 **Common Seal:** BBNZ shall have a common seal. The Board shall determine when and by whom the common seal may be used and shall make provision for its safe custody, subject to the Incorporated Societies Act 1908.

25. Finance

- 25.1 **Financial Year:** The financial year of BBNZ will commence on 1 January and end on 31 December next following, unless otherwise determined by the Board.
- 25.2 **Audit:** The accounts of BBNZ shall be audited by an auditor appointed at the AGM. The auditor shall not hold any other office in BBNZ.

26. Regulations

- 26.1 **Status of Regulations:** All Regulations shall be binding on BBNZ and the Members.
- 26.2 **Priority:** To the extent of any inconsistency between any BBNZ Regulations and this Constitution, this Constitution shall prevail.

27. Liquidation

- 27.1 **Voluntary Liquidation:** BBNZ may be voluntarily put into liquidation if:
- a. a Special Resolution is passed at a General Meeting appointing a liquidator; and
 - b. such resolution is confirmed by Special Resolution at a subsequent General Meeting, called for that purpose, and held not earlier than 30 Days after the date on which the resolution was passed.
- 27.2 **By Law:** BBNZ may also be put into liquidation in accordance with the Incorporated Societies Act 1908.
- 27.3 **Process:** Upon the appointment of a liquidator the relevant provisions of the Incorporated Societies Act 1908 shall apply to the liquidation of BBNZ.
- 27.4 **Consequences:** Upon liquidation, any property or assets remaining after the satisfaction of all BBNZ's debts, liabilities and obligations shall be given or transferred to the New Zealand Basketball Foundation Incorporated, or some other charitable body or bodies having objects similar to the Objects, or to such other charitable purposes determined by the Voting Members at a General Meeting at or before the time of liquidation; if the Voting Members are unable to reach this decision then the body or bodies shall be determined by the liquidator.
- 27.5 **Limitation:** The body or bodies described in Rule 27.4 (Consequences) shall prohibit the distribution of its (or their) income and property among its (or their) members to at least the same or a greater extent than that imposed on BBNZ in this Constitution.

28. Alterations to this Constitution

- 28.1 **Process:** No part of this Constitution may be rescinded or altered nor a new Rule added except by Special Resolution at a General Meeting of BBNZ. Notice of any proposed rescission, alteration or addition must be given in writing to the CEO at least 30 Days' before the meeting at which it is to be considered.

29. Transition Rules

- 29.1 **Establishment BAP:** As soon as practicable after this Constitution comes into force an appointments panel consisting of the following people shall be established ("Establishment BAP"):
- a. a person with expertise in sports governance chosen by SPARC who shall Chair the Establishment BAP ("Establishment BAP Chair");
 - b. a person not currently on the Board with expertise in sports governance nominated by the Board;
 - c. an incumbent Elected Board Member chosen by the Board who is not seeking re-election or appointment to the Board. If all Elected Board Members are seeking re-election then a person shall be chosen by the Board from amongst those Board Members who are not seeking re-election or re-appointment; and

- d. a person chosen by the Board with experience in basketball and an understanding of governance who is not currently on the Board.
- 29.2 **Rules Governing the Establishment BAP:** Unless otherwise stated in Rule 18 (Board Appointments Panel), the requirements in Rule 18 (Board Appointments Panel) shall apply to the Establishment BAP as if every reference to the “BAP” in those Rules is to the “Establishment BAP”.
- 29.3 **Vacancy on the Establishment BAP:** If there is a Casual Vacancy on the Establishment BAP during the Transition Period, the organisation responsible for making the appointment of the vacant position shall appoint a replacement person to serve on the Establishment BAP until the conclusion of the Transition Period. If the Board has resigned en masse so it cannot make appointments to vacancies on the Establishment BAP then SPARC may make the appointments.
- 29.4 **Transition Board:** From the date this Constitution comes into force until the New Board is formed under Rule 29.9 (New Board), the Board of BBNZ shall comprise the persons listed below. This Rule is subject to Rule 29.7 (Board Vacancy During Transition Period).
- a. The 3 persons elected at the AGM in 2010 (or any other person appointed or elected to fill a vacancy in the position occupied by any of those persons), who shall hold office until the New Board is formed in accordance with in Rule 29.9 (New Board).
- b. The 3 persons elected at the AGM in 2011 (or any other person appointed or elected to fill a vacancy in the position occupied by any of those persons), who shall hold office (and retain their titles as President and Vice President but otherwise have the same powers and duties as every other Board Member) until the New Board is formed in accordance with in Rule 29.9 (New Board).
- c. The 2 persons co-opted to the Board under the Previous Constitution shall hold office until the New Board is formed in accordance with in Rule 29.9 (New Board), except for the Appointed Board Member who is the Chairperson continuing on the New Board under Rule 29.9a (New Board).
- 29.5 **Chairperson of the Transition Board:** During the Transition Period the Transition Board shall be chaired by the person who was most recently co-opted to the Board under the Previous Constitution (“Transition Board Chairperson”). Rule 17.6 (Relegation) shall not apply to the Transition Board Chairperson. The Board may appoint a Deputy Chairperson to carry out the functions and powers of the Chairperson as specified in Rule 17.4 (Deputy Chairperson).
- 29.6 **Rules Governing the Transition Board:** Unless otherwise stated in Rule 17 (BBNZ Board) or Rule 19 (Proceedings of the Board), the requirements in those Rules shall apply to the Transition Board as if every reference to the “Board” in those Rules is to the “Transition Board”.
- 29.7 **Board Vacancy During Transition Period:** If any Casual Vacancy arises on the Transition Board it may be left vacant. If any positions on the BBNZ Board which are due to be filled at the AGM in 2011 are not filled by election at that AGM, then any position which is left vacant at the AGM in 2011 shall be deemed to be a Casual Vacancy and may be left vacant during the Transition Period.

- 29.8 **Reduced Quorum:** During the Transition Period the quorum for meetings of the Transition Board is 3 Board Members.
- 29.9 **New Board:** A new Board of BBNZ shall be established as soon as practicable after this Constitution comes into force and no later than 31 December 2011 as follows (“New Board”):
- a. the Transition Board Chairperson shall remain in office as a Board Member and be the chairperson of the New Board for a period of 3 months after the date of commencement of the New Board or such earlier date as agreed with the Chairperson Elect as specified in Rule 29.9d.iii. Rule 17.6 (Relegation) shall not apply to the chairperson of the New Board;
 - b. in addition, the Establishment BAP shall call for applications for 4 elected and 4 appointed positions on the Board to commence office as described in this Rule 29.9d;
 - c. all applications must be submitted to the Establishment BAP by the date specified by the Establishment BAP;
 - d. once the date in Rule 29.9c has passed, the Establishment BAP shall:
 - i. assess all applications, including holding interviews, having meetings, and undertaking such enquiries as the BAP Chair considers appropriate;
 - ii. decide on 4 candidates to be appointed as Appointed Board Members (unless there are insufficient suitable candidates in which case 3 candidates may be appointed and the remaining position shall be a Casual Vacancy to which Rule 17.18 (Casual Vacancies) shall apply);
 - iii. appoint one of the 4 Appointed Board Members in Rule 29.9d.ii to be the new Chairperson (“Chairperson Elect”) who will assume the chair at the conclusion of the period specified in Rule 29.9a (New Board);
 - iv. prepare a shortlist of candidates the BAP considers are suitable to stand for election to the 4 elected positions on the Board, which may consist of up to 3 candidates per vacancy (so the total maximum number of candidates is 12 persons); and
 - v. notify the CEO of the Appointed Board Members (including the Chairperson Elect) and the shortlisted candidates described in Rule 29.9d.iv;
 - e. once the tasks described in Rules 29.9a to 29.9d are complete, the CEO shall notify the Voting Members of the Appointed Board Members including the Chairperson Elect and the shortlisted candidates and arrange a postal vote so the Voting Members can elect 4 people from the shortlist of candidates to fill the Elected Board Member positions in accordance with Rule 29.10 (Postal Vote). The CEO shall also notify the Members of this information by publishing it on the BBNZ website;
 - f. as soon as practicable after the postal vote is complete the CEO shall notify the Members of the results by publishing the names of the Elected Board Members on the BBNZ website and by sending written notice of the results to all Voting Members;
 - g. the Board Members elected and appointed under this Rule 29.9 (New Board) shall commence office 2 Days after the results of the election are published on the BBNZ website;

- h. the Chairperson Elect shall be the Chairperson of the New Board until the conclusion of the AGM in 2013, however this person may remain as a Board Member if their term of office as a Board Member continues in accordance with Rule 29.9i. Rule 17.6 (Relegation) shall not apply to the Chairperson Elect. If a Casual Vacancy arises in this position it may be filled in accordance with Rule 17.18 (Casual Vacancy). Following the AGM in 2013 AGM the Board shall appoint a Chairperson from the Appointed Board Members at its first Board meeting. The Board shall appoint a Deputy Chairperson at the first meeting of the New Board; and
- i. subject to Rule 29.9h, the New Board shall determine a schedule of rotation to ensure that at least one Elected Board Member and one Appointed Board Member shall each vacate their office at successive AGMs. This shall be determined at the first meeting of the New Board.

29.10 **Postal Vote:** Voting Members may vote to elect people from the shortlist of candidates to the New Board as Elected Board Members by postal voting in accordance with the provisions of this Rule 29.10. The following conditions must be satisfied:

- a. BBNZ shall send every Voting Member a voting paper with the names of all of the shortlisted candidates;
- b. every Voting Member may exercise its votes, calculated in accordance with the formula in Rule 15 (Votes of Members) by completing the voting paper and returning it to BBNZ by post, email or facsimile to BBNZ so that it is received by BBNZ by the date specified by BBNZ;
- c. every Voting Member may vote for up to 4 candidates on the shortlist of candidates;
- d. Voting Members may not split their votes;
- e. at least half of the Voting Members must participate in the postal vote by casting their votes; if this threshold is not met the postal vote shall be cancelled;
- f. BBNZ shall appoint 2 scrutineers to review the completed voting papers and:
 - i. count the number of Voting Members who have responded;
 - ii. count the number of votes cast by each Voting Member;
 - iii. count the number of votes cast for each shortlisted candidate; and
 - iv. determine the 4 candidates who have the highest total votes;
- g. the scrutineers shall each sign a certificate confirming they have carried out the duties set out in Rule 29.10f and which sets out the results and provide this to the CEO as soon as practicable; and
- h. in the event of a tie in any of the voting results the CEO shall notify the Transition Board Chairperson who shall have a casting vote.

29.11 **Extension:** If less than half of the Voting Members cast votes in the postal vote the CEO may organise another postal vote which shall be conducted in the same way as that described in Rule 29.10 (Postal Vote).