



# THE RULES OF NEW ZEALAND APPLES AND PEARS INCORPORATED

(As amended 15 August 2019)

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## **THE RULES OF NEW ZEALAND APPLES AND PEARS INCORPORATED**

### **1. DEFINITIONS**

**1.1** In these Rules unless the context otherwise requires:

- (a) "Act" means the Incorporated Societies Act 1908;
- (b) "Associate Member" has the meaning set out in the Membership Criteria;
- (c) "Associated Entity" means any person in which the Society has an ownership interest (whether directly or indirectly) and in respect of which the Society has:
  - (i) the right to receive 25% or more of the profits (however calculated); or
  - (ii) control (whether directly or indirectly) of the appointment of 25% or more of the directors or, in the case of a person which is not a company, the persons who fulfil the role of directors, however named; or
  - (iii) the right to control 25% or more of the votes cast at a meeting of the members of that person;
- (d) "Board" means Directors of the Society who number not less than the required quorum acting together as a board of Directors;
- (e) "Business Day" means a day when registered banks are customarily open for business in the place where the Society's registered office is located;
- (f) "Chairperson" means the Chairperson of the Society elected or appointed pursuant to these Rules;
- (g) "Consultative Group" means a Consultative Group established pursuant to these Rules and includes the Research Consultative Group;
- (h) "Director" means a person holding office for the time being as a director of the Society;
- (i) "Financial Year" means the 12 months ending on the date as at which the balance sheet of the Society is drawn up;
- (j) "Grower" means a person who is, or will be, primarily responsible to pay a Levy in respect of the then current Production Season or, if at any time a Levy is not in effect, then it means a person who is actively engaged in the business of producing Pipfruit in New Zealand;
- (k) "Grower Director" means a Director elected by Grower Members pursuant to clause 8.1(a)(i);

- (l) "Grower Member" has the meaning set out in the Membership Criteria;
- (m) "Levy" means a levy payable to the Society under any order made pursuant to the Commodity Levies Act 1990 (or any similar payment, by whatever named called);
- (n) "Life Member" means a person designated as such under these Rules;
- (o) "Meeting" means any meeting of the Members of the Society;
- (p) "Member" means a person who is a member of the Society and includes Life Members;
- (q) "Membership Criteria" means the criteria set out in Schedule One;
- (r) "Nominated Representative" means a natural person who has been appointed by a Member which is not a natural person to represent that Member in accordance with these Rules;
- (s) "Order" means the Commodity Levies (Pipfruit) Order 2000;
- (t) "Pack House Operator" means a person who is actively engaged in the business of operating Pipfruit pack houses in New Zealand for the packing of Pipfruit produced in New Zealand during the then current Production Season;
- (u) "Post Harvest Member" has the meaning set out in the Membership Criteria;
- (v) "Pipfruit" means and includes all apples (being fruit of all species and varieties of the genus *Malus*) and/or pears (being fruit of all species of *Pyrus* and fruit of all hybrids or interspecific hybrids of those species);
- (w) "Pipfruit Marketer" means a person who:
  - (i) sells Pipfruit grown in New Zealand for resale in New Zealand as whole fresh fruit;
  - (ii) on behalf of another person, sells Pipfruit grown in New Zealand for resale in New Zealand as whole fresh fruit;
  - (iii) exports Pipfruit grown in New Zealand as whole fresh fruit,in each case, during the then current Production Season;
- (x) "Production Season" means the 12 months ended on 31 July in each calendar year;
- (y) "Registrar" means the Registrar of Incorporated Societies; and
- (z) "Society" means New Zealand Apples and Pears Incorporated.

**1.2** In the interpretation of these Rules:

- (a) A reference to “writing” or “in writing” includes a reference to an electronic communication as that term is used in the Electronic Transactions Act 2002 (and, for the avoidance of doubt includes a facsimile) **PROVIDED THAT** the Board may determine which types of electronic communications may be used in any case or cases, the method or methods to be used to identify a person and to indicate that person's approval of, or signature given in relation to, the information contained in an electronic communication and any other matters relating to the validity or use of an electronic communication;
- (b) A reference to persons present or voting at a Meeting shall be deemed to include persons present or voting by proxy or by representative;
- (c) A reference to “export” or “exporter” shall have the same meaning as in the Customs and Excise Act 1996;
- (d) A reference to a "month" means a calendar month;
- (e) References to the singular shall include the plural and reference to the masculine shall include the feminine;
- (f) A reference to any legislation, regulation or order includes a modification and re-enactment of that legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation;
- (g) A reference to any regulation, order-in-council and other instrument from time to time issued or made under any legislation includes a modification and re-enactment enacted in substitution for such regulation, order-in-council and other instrument and, for the avoidance of doubt, includes any levy order made in respect of Pipfruit under the Commodity Levies Act 1990 upon the revocation of the Commodity Levies (Pipfruit) Order 2000.
- (h) A reference to these “Rules” is to these rules, including the schedules, as amended from time to time and a reference to a “Rule” shall be interpreted accordingly;
- (i) Headings in these Rules are included for the purpose of ease of reference only and shall not have any effect on construction and interpretation;
- (j) A reference to a person includes a partnership and also a body of persons, whether corporate or unincorporated; and
- (k) A reference to “includes” and “including” shall be by way of inclusion and shall not limit other matters to which no reference is made.

## **2. NAME AND REGISTERED OFFICE**

- 2.1** The name of the Society shall be New Zealand Apples and Pears Incorporated.
- 2.2** The registered office of the Society shall be situated at such place as from time to time shall be decided by the Board. Notice of any change of situation of the registered office shall be sent to the Registrar.

## **3. OBJECTS**

- 3.1** The Society is established for the object of promoting and developing the New Zealand Pipfruit industry which shall include the following objects:
- (a) to promote and champion the New Zealand Pipfruit industry for the benefit of all participants and for the overall benefit of New Zealand;
  - (b) to speak on behalf of the New Zealand Pipfruit industry;
  - (c) to represent the interests of Members both domestically and overseas in matters of political and commercial significance to Members and to the industry as a whole;
  - (d) to consider and make recommendations to Members and interested parties with respect to the future of the New Zealand Pipfruit industry;
  - (e) to provide services to its Members which will provide benefits to the industry as a whole;
  - (f) to promote, whether directly or indirectly and whether by means of ownership, investment or otherwise, the development and commercial exploitation of new plant varieties for the benefit of Grower Members;
  - (g) to identify, undertake, fund and promote research and development relating to the New Zealand Pipfruit industry;
  - (h) to develop and promote access to domestic and overseas markets for New Zealand Pipfruit;
  - (i) to initiate, organise and publicise seminars, workshops, conferences and meetings for the education and development of participants in the Pipfruit industry; and
  - (j) to undertake any obligations that are required of the Society pursuant to the Commodity Levies Act 1990 and any other relevant legislation.
- 3.2** In carrying out its objects the Society shall:
- (a) institute and maintain in place mechanisms to ensure that Members are consulted, are able to participate and are able to have their views fairly

represented in each case on a regional and a national basis on issues and matters of concern to them;

- (b) liaise and work with other relevant organisations in New Zealand and overseas;
- (c) consider whether any of its functions could be more advantageously or efficiently carried out by another person; and
- (d) do all things and make such arrangements whatsoever which are incidental or conducive to the objects of the Society and which, in the opinion of the Board, can advantageously be carried out, performed, done or executed for the benefit of the Society and its Members and for the furtherance of its objects.

## **4. MEMBERSHIP**

### **4.1 Classes of Members**

- (a) There shall be four classes of Members:
  - (i) Members;
  - (ii) Post Harvest Members;
  - (iii) Associate Members; and
  - (iv) Life Members.
- (b) Membership Criteria (other than for Life Members) shall be as set out in Schedule One.
- (c) The Board may recommend to an Annual General Meeting of the Society that a natural person be designated a Life Member of the Society in recognition of special services rendered by the person to the Pipfruit industry in New Zealand. The approval of 67% of the votes of those entitled to vote and voting on the resolution shall be necessary to designate a Life Member.

### **4.2 Conditions of Membership**

The Board may from time to time impose special conditions which are consistent with the objects of the Society on persons being or becoming Members or any class or classes of Members and which are applicable to all persons being or becoming Members or any class or classes of Members.

### **4.3 Application for Membership**

- (a) Any person who wishes to become a Member (other than those who are Grower Members through Levy payment and Life Members) must complete

the Society's membership application form for the class or classes of membership for which that person qualifies and must provide such details and information as the Board may require.

- (b) A person may be granted membership in one or more of the classes at the same time.
- (c) A Grower shall automatically become a Grower Member with effect from the date of becoming liable to pay the Levy, and shall not be required to complete an application form **PROVIDED THAT**:
  - (i) a Grower may, by written notice to the Society, decline to become a Member; and
  - (ii) a Grower who wishes to become a member in a class other than that of Grower Member must complete the Society's membership application form for the other class of membership for which that person qualifies and must provide such details and information as the Board may require.
- (d) Once a person has applied for a class of membership then the Board shall consider that person's application at the next Board meeting. The Board may either accept or decline the application and inform the applicant in writing of the outcome of the application, or adjourn the consideration of the application and call for more information regarding the applicant.
- (e) The Board may not unreasonably decline any application for membership or for any class of membership.
- (f) If the application is declined, the Board must advise the applicant in writing of its reasons for declining the application and the applicant may seek a rehearing in person at the Board meeting following notification that the application has been declined. If the application is declined after the rehearing, no further application from that applicant will be considered by the Board during that Production Season.
- (g) An applicant for Associate membership or Post Harvest membership shall only become a Member upon receipt by the Board of the relevant membership fee for such class of membership.

#### 4.4 Change of Membership Status

Any Member may apply for membership in a different or additional class by written notice to the Board. Every such notice shall (unless otherwise stated in the notice) take effect from the time of approval by the Board. Rule 4.3 shall apply to such an application with all necessary modifications.



#### 4.5 Resignation or Removal from Membership

- (a) Any Member may resign from membership by written notice to the Society. Every such notice shall (unless otherwise stated in the notice) take effect from the beginning of the next Production Season; a notice in writing from a Grower to the Society stating that the Member is no longer a Grower shall be deemed to be a notice of resignation.
- (b) If any Member is convicted of an indictable offence or is adjudged bankrupt or makes a compromise with creditors or if any effective resolution or order of court is passed or made for the winding up or dissolution of any company or other body corporate or unincorporate which is a Member, then that Member shall without release from any prior liability to the Society forthwith cease to be a Member, but the Board may in its discretion reinstate the Member.
- (c) The Board may, at any time, end a Member's membership if the Member no longer meets any membership Criteria or the Board is satisfied that the Member is in default of any of the Member's obligations under these Rules (including obligations to pay membership fees or to provide information) or any regulations or has acted in a manner which is not in the best interests of the Society or the Pipfruit industry **PROVIDED THAT** the Board shall not end any Member's membership under this Rule unless the Board has first:
  - (i) advised the Member in writing of the fact that it intends to consider ending the Member and the reasons for doing so; and
  - (ii) afforded the Member a reasonable opportunity to be heard.

#### 4.6 Provision of Information

- (a) The Board may from time to time require any Member or class of Members to provide information to the Society concerning any matter which is relevant to the application of these Rules to that Member or class of Members in such form, within such period, and at such time or times as the Board determines.
- (b) A Member shall provide all information in such form, within such period, and at such time or times as the Board requires pursuant to Rule 4.6(a).
- (c) If a Member fails to provide any information to the Society as and when required, then in addition to any other action that it may take under these Rules, the Board may, by written notice to the Member, suspend all, or a part of, that Member's voting rights until such time as the Board is satisfied that the information has been provided.

#### **4.7 Nominated Representative**

- (a) A Member which is not a natural person may appoint a natural person as its Nominated Representative to act on its behalf, including to attend, vote and be heard at Meetings, by giving a written notice to the Society which:
  - (i) must be signed by at least 1 director of the Member or, if the Member is not a company, a person holding a position equivalent to that of a director;
  - (ii) must be deposited with the Society:
    - (A) at its registered office; or,
    - (B) in the case of an appointment that is specific to a Meeting or Meetings, in the same manner as a proxy would have to be deposited to be effective at that Meeting or those Meetings; and
  - (iii) may specify that it is valid for a specific Meeting or Meetings, time or purpose in which case the appointment shall be valid in accordance with its terms.
- (b) No Member may have more than 1 Nominated Representative.
- (c) A Member may, at any time by notice in writing to the Society, revoke the appointment of its Nominated Representative.
- (d) If a Member which is not a natural person does not have a current Nominated Representative, then in the absence of actual knowledge to the contrary, the Society may recognise any person who is, or purports to be, a director or officer of the Member or, if the Member is not a company, a person who holds or purports to hold a position equivalent to that of a director of the Member, as the Member's authorised representative to act on its behalf, including to attend, vote and be heard at Meetings.

#### **5. MEMBERSHIP FEES**

- 5.1** The Board may from time to time determine the amount (or manner of calculation of the amount) of any annual membership fee payable by any class of Members.
- 5.2** The Board may reduce pro rata the membership fee for a Member joining or changing its class of membership in the second half of any Production Season.
- 5.3** Where any Member or class of Members pays to the Society a Levy, the Board may deem such payment as constituting payment in full of the relevant membership fee.

**5.4** If a Member fails to pay any applicable membership fee in full as and when it is due, the Board may by written notice to the Member, suspend all, or a part of, that Member's voting rights until such time as the membership fee is paid in full.

## **6. BALANCE DATE**

The balance date for the Society shall be fixed by the Board from time to time.

## **7. MEETINGS**

### **7.1 Annual General Meeting**

(a) An Annual General Meeting of the Society shall be held within 6 months of the end of each Financial Year and not later than 15 months after the previous Annual General Meeting at such time and place as the Board from time to time determines.

(b) The purpose of the Annual General Meeting shall be to:

- (i) receive an Annual Report from the Board,
- (ii) appoint an auditor for the ensuing Financial Year; and
- (iii) consider any matters of general business which may be duly submitted to the Meeting.

(c) The Annual Report shall contain the following matters:

- (i) audited financial statements of the Society for the preceding Financial Year together with details of any mortgage, charge or security affecting any property of the Society;
- (ii) a report on each Associated Entity in which the proceeds of any Levy have been invested during the preceding Financial Year which shall include:
  - (A) sufficient information to enable Grower Members to determine how the investment has, or is anticipated to, benefit Grower Members; and
  - (B) the criteria used by the Board in exercising the Society's control (whether directly or indirectly) over the appointment of the directors or, in the case of a person which is not a company, the persons who fulfil the role of directors, however named, of the Associated Entity.

(d) At least 10 days notice of every Annual General Meeting shall be given to every Member.

- (e) The notice shall state the business to be transacted at that Meeting and shall include a copy of the Annual Report.

## **7.2 Special General Meetings**

- (a) The Board shall convene a Special General Meeting on a date and at a venue determined by the Board:
  - (i) upon the direction of the Board by simple majority from time to time, for the consideration of such matters as it determines; or
  - (ii) upon the requisition in writing of at least 15% in number of the Members stating the purpose for which the Meeting is required.
- (b) At least 10 days notice of every Special General Meeting shall be given to every Member.
- (c) The notice shall state the business to be transacted at that Meeting, including the full text of any resolution which is proposed to be adopted at that meeting.
- (d) No resolution may be passed at a Special General Meeting unless the full text of that resolution was included in the notice of the Meeting or, if the Meeting is adjourned, in a notice which is given to Members of the adjourned meeting and which complies with Rules 7.2(b) and 7.2(c).

## **7.3 General Provisions Regarding Notice**

- (a) No business other than that stated in the notice convening the Meeting shall be transacted at any Meeting but if a Meeting is adjourned, a new notice which complies with Rules 7.2(b) and 7.2(c) may be given to Members of the matters to be considered at the adjourned meeting.
- (b) The accidental omission to give notice of a Meeting to, or the failure to receive notice of a Meeting by, a Member does not invalidate the proceedings at that Meeting.
- (c) The period applicable to a notice of a Meeting shall be counted from and including the day on which the notice is delivered or deemed to be delivered and shall end on the day before the day of the Meeting.

## **7.4 Chairperson**

- (a) The Chairperson of a Meeting shall be the Chairperson of the Board.
- (b) If the Chairperson is unavailable, the Board shall appoint one of its number to chair the meeting in the Chairperson's absence.

- (c) The Chairperson shall not have a casting vote in the case of an equality of votes.

## **7.5 Quorum**

A quorum for a Meeting is 20 Members present in person, by proxy or by Nominated Representative.

## **7.6 Proxy**

- (a) Any instrument appointing a proxy shall be in writing in the form attached as Schedule 2, or in similar form.
- (b) No proxy is effective in relation to a Meeting unless a copy of the notice of appointment is produced:
  - (i) before the start of the Meeting; or,
  - (ii) if the notice of Meeting so provides, at the registered office of the Society at least 24 hours before the start of the Meeting,
- (c) A proxy for a Member is entitled to attend, vote and be heard at a Meeting as if the proxy were the Member.

## **7.7 Voting Rights**

### **Grower Members**

- (a) On all matters in respect of which a Grower Member is entitled to exercise a vote, a Grower Member shall have:
  - (i) 1 vote for each kilogram of Pipfruit grown by the Member and sold for consumption or for resale in New Zealand as whole fresh fruit; and
  - (ii) 1 vote for each kilogram of Pipfruit grown by the Member and exported as whole fresh fruit,in the most recent full Production Season as determined by the Society in accordance with its records.
- (b) Grower Members shall be entitled to vote on any resolution regarding a Levy and on all other matters.
- (c) No Member other than a Grower Member shall be entitled to vote on a resolution regarding:
  - (i) a Levy;
  - (ii) the amendment of these Rules; or

- (iii) the appointment or removal from office of a Director who has been, or is to be, appointed by Grower Members.

### **Post Harvest Members**

- (d) On all matters in respect of which a Post Harvest Member is entitled to exercise a vote, a Post Harvest Member who is a Pack House Operator shall have: 1 vote for each kilogram of Pipfruit grown in New Zealand and packed by that Member for:
  - (i) sale for consumption or resale as whole fresh fruit in New Zealand; or
  - (ii) export as whole fresh fruit,in the most recent full Production Season as determined by the Society in accordance with its records;
- (e) On all matters in respect of which a Post Harvest Member is entitled to exercise a vote, a Post Harvest Member who is a Pipfruit Marketer shall have 1 vote for each kilogram of Pipfruit grown in New Zealand which the Member:
  - (i) sold in New Zealand for resale in New Zealand as whole fresh fruit;
  - (ii) sold on behalf of another person for resale in New Zealand as whole fresh fruit, or
  - (iii) exported as whole fresh fruit,in the most recent full Production Season as determined by the Society in accordance with its records.
- (f) Post Harvest Members shall be entitled to vote on all matters other than a resolution regarding:
  - (i) a Levy;
  - (ii) the amendment of these Rules; and
  - (iii) the appointment or removal from office of a Director who has been, or is to be, appointed by Grower Members.

### **Associate Members**

- (g) An Associate Member shall not have any right to vote on any matter.

### **Life Members**

- (h) A Life Member shall not have any right to vote on any matter, unless the Life Member retains current membership of another class of membership.

## 7.8 Adjustments by the Board

- (a) The determination by the Society as to the voting rights of any Member shall, in the absence of proof of manifest error, be final and binding **PROVIDED THAT** if the Board is satisfied on reasonable grounds that information contained in the Society's Records is incorrect, or that an error has occurred, the Board may, by written notice to the Member, recalculate that Member's voting rights having regard to the Board's assessment of the correct information.
- (b) If in any Production Season a Grower Member's Pipfruit production has been seriously reduced by a natural disaster, the Grower Member may apply to the Board to have its voting entitlement varied from an entitlement based on the Member's actual production in that Production Season to an entitlement based upon the Member's last Production Season of full production, according to the records held by the Society. The Board may in its sole discretion, grant the Member's application in whole or in part, or decline the application, and the Board's determination shall be final and binding on the Member.

## 7.9 Majority Voting

Unless otherwise provided in these Rules, every resolution of the Society shall be duly made if a simple majority of the valid votes recorded are in favour of the resolution.

## 7.10 Voting at Meetings

- (a) At any Meeting a resolution put to the vote shall be decided by a show of hands unless a poll is (before, or on, the declaration of the result of the show of hands) demanded by the Chairperson of the Meeting or at least 4 Members.
- (b) Unless a poll is demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against that resolution.
- (c) If a poll is duly demanded, it shall be taken in such manner as the Chairperson directs and the result of the poll shall be deemed to be the resolution of the Meeting at which the poll was demanded.
- (d) A poll demanded on a question of adjournment shall be held forthwith. A poll demanded on any other question shall be taken at such time as the Chairperson directs.

### **7.11 Postal Voting**

- (a) Any matter which may be determined at a Meeting may, at the discretion of the Board, be determined by a postal ballot of Members and, for the purposes of this Rule a “postal ballot” includes a ballot which is conducted by electronic means (including e-mail and facsimile).
- (b) If the Board so determines (which determination shall be evidenced by a statement to that effect in the notice of the meeting), Members may cast a postal vote on all or any of the matters to be voted on at a Meeting by sending a written notice of the manner in which the Member’ votes are to be cast to a person authorised to receive and count postal votes at that meeting. The notice must reach that person before the date specified as the date by which votes must be returned.
- (c) The notice calling for a postal vote or permitting the casting of postal votes at a Meeting shall be in such form as the Board determines but shall state:
  - (i) that Members are entitled to cast a postal vote;
  - (ii) the name and address of the person or persons authorised by the Board to receive and count postal votes;
  - (iii) the text of the resolution to be voted on; and
  - (iv) the date by which votes must be returned.
- (d) It is the duty of a person authorised to receive and count postal votes:
  - (i) to collect together all postal votes received;
  - (ii) in relation to each resolution to be voted on, to count the number of votes in favour of, and against, the resolution;
  - (iii) to sign a certificate that he or she has carried out the duties set out in paragraphs (i) and (ii) of this Rule and which sets out the results of the counts required by paragraph (ii) of this Rule; and
  - (iv) to ensure that the certificate required by paragraph (iii) of this Rule is presented to the Chairperson.
- (e) Except as specified in this Rule the Board may determine the manner in which it conducts a postal vote.

### **7.12 Other Proceedings**

- (a) Unless otherwise provided in these Rules, all Members shall have the right to speak at meetings of the Society.



- (b) Subject to these Rules, a meeting of Members may regulate its own procedure.

## **8. THE BOARD**

### **8.1 Composition of Board**

- (a) The Board shall comprise at least 7 and up to 9 Directors, of whom:
  - (i) 7 Directors shall be elected by Grower Members; and
  - (ii) up to 2 Directors may be appointed and removed by the Board.
- (b) The persons who are eligible to be elected as a Director under Rule 8.1(a)(i) are natural persons who are, at the time of their election, either a Grower Member or a person who is engaged as an employee of a Grower-owned entity or an associated entity of the Grower; and
- (c) The persons who are eligible for appointment as a Director under Rule 8.1(a)(ii) are natural persons who are not disqualified by subsection (2) of section 151 of the Companies Act 1993 from being appointed as a director of a company.

### **8.2 Election of Directors**

The election of Directors to be elected by the Members pursuant to Rule 8.1 shall be conducted as follows:

- (a) The Board shall call for nominations for election to the Board from Grower Members at least 2 months before the Annual General Meeting of the Society by written notice to all Grower Members. The notice shall:
  - (i) specify that nominations must be returned to the Board within the time specified in the notice which shall not be less than 21 days after the date of the notice; and
  - (ii) identify the Directors whose term of office is due to end pursuant to paragraphs (e), (g)(i) or g(ii) of this Rule;
- (b) A nomination must be signed by the person making the nomination and the person seconding the nomination both of whom must be Grower Members;
- (c) If the nominations received by the Board from Grower Members do not exceed the number of Directors to be elected in that year, the Board shall then declare those so nominated elected and those nominated shall take office at the conclusion of the next Annual General Meeting;
- (d) If the nominations received from Grower Members exceed the number of Directors to be elected in that year, then the election of Directors shall be

determined by a postal ballot of Grower Members and, for the purposes of this Rule a “postal ballot” includes a ballot which is conducted by electronic means (including e-mail and facsimile). The postal ballot shall be conducted in accordance with paragraphs (c) to (e) of Rule 7.11 except that a reference to “at a Meeting” shall be deemed to be a reference to “on the election of a Director”. Those Directors elected by postal ballot shall take office from the conclusion of the next Annual General Meeting;

- (e) [*This Rule takes effect on 16 August 2019*] Subject to Rule 8.3, every Director elected by Grower Members pursuant to Rule 8.1 shall hold office until the end of the third Annual General Meeting after he or she takes office; and
- (f) A Grower Director whose term of office is due to expire may offer him or herself for re-election PROVIDED THAT no person shall be eligible for re- election as a Grower Director if, as at the date of the next Annual General Meeting, that person will have served as a Director for a consecutive period of 12 years from the date he or she took office.
- (g) Transitional provisions:
  - (i) Each Director holding office at 15 August 2019 shall continue to hold office until the end of their current term.
  - (ii) If the terms of office of more than two Directors are due to expire at the Annual General Meeting to be held in 2021 (“**2021 Retiring Directors**”), then:
    - (A) Two of the 2021 Retiring Directors shall retire at that Annual General Meeting and the term of office of the remainder of the 2021 Retiring Directors shall be extended to the Annual General Meeting to be held in 2022;
    - (B) The 2021 Retiring Directors shall endeavour to agree between themselves which two of them shall retire at the 2021 Annual General Meeting, but if they cannot agree before the date on which the Board proposes to call for nominations pursuant to Rule 8.2(a), the matter of which Directors are to retire shall be forthwith determined by lot.

### 8.3 Vacancy of Office

The office of any Director shall become vacant if the Director:

- (a) dies;
- (b) resigns in writing;

- (c) is absent without leave of the Chairperson from more than 2 successive Board meetings;
- (d) is removed from office at an Annual or Special General Meeting by a resolution of Growers (but only if the notice of meeting stated that one of the matters to be considered at the Meeting was the removal of the Director);
- (e) was appointed by the Board pursuant to Rule 8.1(a)(ii) and is removed from office by the Board; or
- (f) ceases to be eligible for appointment as a Director pursuant to Rule 8.1(b) or Rule 8.1(c).

#### **8.4 Filling of Vacancy**

If a vacancy arises on the Board, the Board may either:

- (a) conduct an election process under Rule 8.2 (with such modifications as the Board considers necessary); or
- (b) appoint such person as it thinks fit to fill the vacancy.

Every person so elected or appointed shall hold office for the unexpired portion of the term of office of the Director in whose place they have been elected or appointed, but shall be eligible for re-election.

#### **8.5 Duties of Directors**

- (a) In exercising powers or performing duties under these Rules, each Director shall:
  - (i) act in good faith and in what the Director believes to be the best interests of the Society;
  - (ii) exercise the powers of office for a proper purpose;
  - (iii) not act, or agree to the Society acting, in a manner that contravenes the Act or these Rules;
  - (iv) exercise the care, diligence and skill that a reasonable Director would exercise in the same circumstances taking into account:
    - (A) the nature of the Society;
    - (B) the nature of the decision; and
    - (C) the position of the Director and the nature of the responsibilities undertaken by him or her.

- (b) A Director must not:
  - (i) agree to the business of the Society being carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;
  - (ii) cause or allow the business of the Society to be carried on in a manner likely to create a substantial risk of serious loss to the Society's creditors;  
or
  - (iii) agree to the Society incurring an obligation unless the Director believes at that time on reasonable grounds that the Society will be able to perform the obligation when it is required to do so.

### 8.6 Research Consultative Group

- (a) The Board shall establish a Research Consultative Group, for the purpose of providing advice to the Board on all matters relating to research activities.
- (b) The membership of the Research Consultative Group shall be determined by the Board **PROVIDED THAT**:
  - (i) all of the members of the Research Consultative Group shall be persons who have an understanding of research issues; and
  - (ii) at least half of the members of the Research Consultative Group shall be persons who are Grower Members or Nominated Representatives of Grower Members.
- (c) The proceedings of the Consultative Group shall be governed by such rules as the Board may determine from time to time including as to the timing and content of reports to the Board.

### 8.7 Other Consultative Groups

- (a) The Board may establish and disestablish such Consultative Groups, with such areas of interest and terms of reference, as it thinks fit.
- (b) The membership of any Consultative Group may consist of only Directors, a mix of Directors and others or only persons other than Directors and may be chosen on a regional basis if the Board so determines.
- (c) The proceedings of a Consultative Group shall be governed by such rules as the Board may determine from time to time including as to the timing and content of reports to the Board.

### 8.8 Regional Liaison

The Board shall take such steps as it considers are reasonable to establish communication and consultation both:

- (a) between the Society and Members within the different regions; and
- (b) among the Members within the different regions,

so that the Society will be aware of regional issues and be able to assist in facilitating measures to deal with such issues on a regional basis.

## **9. MEETINGS OF THE BOARD**

### **9.1 Chairperson**

The Board shall elect a Chairperson of the Board from among their number.

### **9.2 Convening Meetings**

Meetings of the Board may be convened by written notice to all of the Directors at such times and places as the Chairperson or the Board from time to time determines. At least 6 meetings of the Board shall be convened each calendar year.

### **9.3 Quorum**

The quorum for a meeting of the Board shall be 5 Directors.

### **9.4 Voting**

Each Director shall have one vote on any resolution at a Board meeting.

### **9.5 Notice**

Not less than 5 days written notice of a meeting of the Board must be sent to every Director, and the notice must include the date, time, and place of the meeting and the matters to be discussed. An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

### **9.6 Telephone Meetings:**

- (a) For the purposes of these Rules the contemporaneous linking together by telephone of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a Board meeting and all the provisions in these Rules as to Board meetings shall apply to such meetings by telephone so long as the following conditions are met:
  - (i) all the Directors for the time being entitled to receive notice of a Board meeting shall be entitled to notice of a meeting by telephone and to be

linked by telephone for the purposes of such meeting. Notice of any such meeting may be given on the telephone;

- (ii) each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting;
- (iii) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a Board meeting to all the other Directors taking part;
- (iv) a Director may not leave the meeting by disconnecting his or her telephone unless he or she has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone unless he or she has previously obtained the express consent of the Chairperson to leave the meeting as aforesaid;
- (v) a minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting; and
- (vi) for the purposes of this Rule "telephone" shall include all electronic, visual, audio visual and other means of simultaneously interconnecting the Directors to enable a Board meeting to be carried on.

**9.7 Written Resolution:** A resolution in writing signed by a majority of the Directors entitled to receive notice of a Board meeting shall be valid and effectual as if it had been passed at a Board meeting duly convened and held. Any such resolution may consist of several instruments in writing in like form, each signed by one or more Directors.

**9.8 Other Proceedings:** Except as provided in this Rule 9, the Board may regulate its own procedure.

## **10. MANAGEMENT**

**10.1** Subject to Rule 10.2, the business and affairs of the Society must be managed by or under the direction or supervision of the Board.

**10.2** The Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Society except to the extent that these Rules expressly require those powers to be exercised by the Members or any other person.

- 10.3** The Board may delegate to a committee of Directors, a Director, or an employee of the Society or any other person any one or more of its powers, other than this power of delegation.
- 10.4** To the extent that the Board delegates a power, the Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:
- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on Directors of the Society by these Rules; and
  - (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

## **11. RECORDS**

**11.1** The Board shall ensure that:

- (a) a record is kept of all proceedings of the Society and the Board;
- (b) a record is kept of all Members, their addresses, class of membership, Criteria for Membership detail, occupations, the date on which they became members of the Society and details of production and export of Pipfruit as supplied by Members from time to time;
- (c) a correct record is kept of all monies due to the Society, or all payments made by the Society; and
- (d) all correspondence, records and reports connected with the Society are kept for a reasonable period.

## **12. AUDITOR**

**12.1** The auditor shall be a person who is not a Member, but who is a chartered accountant (within the meaning of section 19 of the Institute of Chartered Accountants of New Zealand Act 1996).

**12.2** A partnership may be appointed by the firm name to be the auditor of the Society if all or some of the partners are persons who are qualified to be appointed as auditors of the Society and:

- (a) the appointment of a partnership by the firm name to be the auditor of the Society is deemed to be the appointment of all the persons who are partners in the firm from time to time; and
- (b) where a partnership that includes persons who are not qualified to be appointed as auditors of the Society is appointed as auditor, the persons who

are not qualified to be appointed as auditors must not act as auditors of the Society.

**12.3** The auditor shall examine and check the books of the Society and see they are properly kept and balanced and also audit the financial statements of the Society.

### **13. COMMON SEAL**

**13.1** The Board shall be responsible for the safe custody and control of the common seal of the Society.

**13.2** Whenever the common seal of the Society is required to be affixed to any document the seal shall be affixed pursuant to a resolution of the Board and shall be witnessed by any 2 Directors or one Director and any other person authorised for that purpose by the Board.

**13.3** Unless expressly required by law, a contract or other enforceable obligation may be entered into by the Society as follows:

- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Society in writing signed under the name of the Society by:
  - (i) 2 or more Directors; or
  - (ii) a Director, or other person or class of persons whose signature or signatures must be witnessed; or
  - (iii) 1 or more attorneys appointed by the Society;
- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Society in writing by a person acting under the Society's express or implied authority;
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Society in writing or orally by a person acting under the Society's express or implied authority.

### **14. SOCIETY FUNDS**

**14.1** All monies received by or on behalf of the Society shall forthwith be paid to the credit of the Society in a bank account nominated by the Board and all cheques or withdrawal slips drawn on the account shall be signed by any one or more persons appointed for that purpose by the Board.

**14.2** The Society may from time to time invest and reinvest the whole or any part of its funds not required for the immediate business of the Society. The Board in



exercising their powers pursuant to this Rule shall exercise the care, diligence, and skill that a prudent person of business would exercise in managing the affairs of others.

## **15. BORROWING**

**15.1** The Society may in addition to the other powers vested in it borrow or raise money from time to time by the issue of debentures, bonds, mortgages or any other security founded or based on all or any of the property and/or rights of the Society or without any security and upon such terms as to priority and otherwise as the Society thinks fit.

## **16. WINDING UP**

**16.1** The Society may be wound up voluntarily if the Society, at a Meeting of its Members, the Grower Members pass a simple majority resolution requiring the Society to be wound up, and that resolution is confirmed by a simple majority resolution of Grower Members at a subsequent Special General Meeting called for that purpose and held not earlier than thirty days after the date on which the original resolution to be confirmed was passed.

**16.2** If the Society is wound up, any surplus assets after payment of the Society's liabilities and the expenses of the winding-up shall be distributed to any incorporated society, institution or trust for purposes which are of a kind or nature similar to, or substantially similar to, those of the Society as determined by the Grower Members in the resolution requiring the Society to be wound up (in the case of a voluntary liquidation) or, in any other case, by the Board.

## **17. AMENDMENT OF RULES**

**17.1** With the exception of this Rule, these Rules may be amended by a resolution passed by at least 75% of the votes of Grower Members entitled to vote and voting at a Meeting of which 14 days notice has been given. No alteration shall be made to these Rules which would enable the income or other funds of the Society to be used for or be available for the private pecuniary profit of any Member.

**17.2** Every notice given in terms of Rule 17.1 shall set out the wording and purpose of the proposed amendment to these Rules.

**17.3** Duplicate copies of every amendment to these Rules shall forthwith be delivered to the Registrar in accordance with the Act.

**17.4** The Society may from time to time make, amend or rescind regulations or by-laws not inconsistent with these Rules governing the affairs of the Society and the procedures at its Meetings.

**17.5** The decision of the Board on the interpretation of these Rules or any matter or thing not contained in these Rules and which pertains to the Society shall be conclusive and binding on all Members unless revoked at a Meeting.

## **18. INCORPORATION OF BRANCHES**

**18.1** The Society may, in addition to its other powers, apply to the Registrar in accordance with the Act for the incorporation of any local branch, or for the incorporation of a group or of groups of such branches of the Society.

**18.2** The Society may fund branches incorporated under Rule 18.1 (including by the provision of travel grants to ensure representation of that branch at Meetings of the Society).

## **19. NOTICES**

**19.1** Any notice required or permitted to be given under these Rules shall be validly given if sent to the last known address of the person as shown in the records of the Society and shall be deemed to have been delivered:

- (a) if given by post, on the second Business Day after posting;
- (b) if by delivery, then upon delivery; and
- (c) if by electronic means, then upon dispatch **PROVIDED THAT** if dispatch occurs after 5PM on a Business Day or on a day which is not a Business Day, then on the beginning of the Business Day following dispatch.

**19.2** The Board may, in its discretion, make and amend such further provisions relating to the receipt and delivery of notices as it considers appropriate.

## SCHEDULE ONE

### ELIGIBILITY FOR MEMBERSHIP

(1) **Grower Members**

Persons who are Growers.

(2) **Associate Members**

Persons associated with the Pipfruit industry during the then current Production Season including nurserymen, spray companies and consultants, but excluding Grower Members and Post Harvest Members.

(3) **Post Harvest Members**

Persons who are Pack House Operators, Pipfruit Marketers or both.

## SCHEDULE TWO

### Form of Proxy

#### NEW ZEALAND APPLES AND PEARS INCORPORATED (“the Society”)

I/We \_\_\_\_\_  
being a Member/Members of the Society hereby appoint \_\_\_\_\_  
or failing him/her \_\_\_\_\_, as my/our proxy to vote for  
me/us on my/our behalf at the general meeting of the Society to be held on the \_\_\_\_  
day of \_\_\_\_\_ 20\_\_\_\_, and at any adjournment thereof.

My/our voting Entitlement pursuant to the Rules of the Society is  
\_\_\_\_\_ votes.

This form is to be used as follows [insert resolution numbers and whether for or  
against]

Resolution No. [  ] For/Against\*

Resolution No. [  ] For/Against\*

Resolution No. [  ] For/Against\*

Resolution No. [  ] For/Against\*

[\*Delete One]

Unless otherwise instructed the proxy will vote as he or she thinks fit.

SIGNED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,

Signature of Member/Members:

\_\_\_\_\_

\_\_\_\_\_

**Document Control**

Release #	Release Date	Author	Approval	Amendment Detail
1.00	15 August 2019*	Julie Cringle	NZAPI AGM	Updated Rules approved at AGM
1.01	6 September 2021	Jess Cranswick	N/a	Formatted for consistency with the rest of the Directors Reference Manual
1.02	20 February 2024	Abbey Goodacre	Karen Morrish	Formatted for consistency with the Directors Reference Manual and proof reading for relevance