

Rules
of
The Royal New Zealand Ballet Foundation Trust

(As adopted by resolution of the Board on 30 October 2020)

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Rules of The Royal New Zealand Ballet Foundation Trust

1. Name

- 1.1 The name of the trust is The Royal New Zealand Ballet Foundation Trust, a charitable trust with registered number 367291 under the Charitable Trusts Act 1957 and with Charities Services number CC47241 under the Charities Act 2005 ("The Foundation").

2. Registered Office

- 2.1 The registered office of The Foundation shall be at such place as the Board determines.

3. Definitions and Interpretation

- 3.1 In these Rules:

"Annual Meeting" means the meeting referred to in Rule 8;

"Balance Date" means 31 December or such other date fixed by the Board;

"Board" means the board of Trustees;

"Charities Act" means the Charities Act 2005;

"Financial Year" means the year or other accounting period ending on the Balance Date;

"Purpose" means the charitable purpose of The Foundation as set out in Rule 4 of these Rules;

"Rules" means these rules;

"Tax Act" means the Income Tax Act 2007;

"The Royal New Zealand Ballet" means The Royal New Zealand Ballet, a charitable trust with registered number 210457 under the Charitable Trust Act 1957 and with Charities Services number CC25091 under the Charities Act 2005; and

"Trustees" means the trustees of The Foundation.

- 3.2 Any reference to any Act, regulation, Rule, by-law, policy, deed, procedure or document includes any amendment to it and any replacement passed in substitution for it.

- 3.3 The plural includes the singular and vice versa and words of the male gender include the female and vice versa.

- 3.4 References to persons include individuals, companies, corporations, firms, partnerships, joint ventures, associations, organisations, trusts, estates, agencies of state, government departments, crown entities, territorial authorities and all other incorporated or unincorporated groups or entities.

4. Purpose

- 4.1 The Purpose of The Foundation is to support The Royal New Zealand Ballet as the foremost proponent of ballet in New Zealand by:

- a. Supporting, promoting and advancing ballet as a form of creative and artistic endeavour in New Zealand with the aim that The Royal New Zealand Ballet and all those involved with the art form as a career will be given greater opportunities for artistic growth; and/or
 - b. Attracting dancers, artistic directors, choreographers, designers and other creative professionals of the highest quality to work with or for The Royal New Zealand Ballet, including by commissioning new work; and/or
 - c. Offering scholarships to New Zealand dancers and other creative professionals for training or pathway opportunities leading to potential positions at The Royal New Zealand Ballet; and/or
 - d. Providing support to dancers and creative professionals at, or engaged by, The Royal New Zealand Ballet to further develop their careers in their art form both within and outside of The Royal New Zealand Ballet; and/or
 - e. Promoting the public benefit of dance particularly of ballet as an activity for the health, fitness and cultural enrichment of all New Zealanders; and/or
 - f. Informing, educating, promoting, encouraging and demonstrating to New Zealanders of all ages the public benefit and value of ballet as a creative and artistic endeavour; and/or
 - g. Supporting capital projects initiated by The Royal New Zealand Ballet which enhance New Zealander's experience of ballet, support artistic excellence or build capacity of The Royal New Zealand Ballet; and/or
 - h. Providing access for communities that otherwise would not have access to ballet; and/or
 - i. Seeking funds in the nature of bequests, donation, endowments, grants, gifts and legacies to be used for the Purpose.
- 4.2 In interpreting these Rules and for the avoidance of doubt, the pursuit of the Purpose does not preclude financial or other support being given by The Foundation to persons and entities other than The Royal New Zealand Ballet provided that:
- a. Any such support is consistent with the purpose of supporting The Royal New Zealand Ballet; or
 - b. The Foundation is in receipt of funds specifically provided to it by a third party for a particular activity, purpose or endeavour which promotes ballet in New Zealand more generally and does not conflict or compete with any activity, purpose or endeavour of The Royal New Zealand Ballet.
- 4.3 The Purpose of The Foundation may not extend to any matter or thing which is not charitable within the meaning of the Tax Act or the Charities Act or not carried out predominantly within New Zealand.

5. Powers

- 5.1 The Trustees shall in addition to all other powers conferred by law have the widest possible powers and discretions to achieve the Purpose of The Foundation and shall be empowered to exercise all the rights, powers and privileges and may incur all the liabilities and obligations of a natural person of full age and capacity.

5.2 Subject to these Rules, the Trustees shall have all powers over and in respect of The Foundation and The Foundation assets which they could exercise if they were the absolute and beneficial owners of The Foundation assets. In particular, and subject to these Rules (and by way of example and not limitation) the Trustees shall have full and absolute power to do the following:

- a. To raise money by all means and in particular to solicit, receive and enlist financial or other support from any persons, including donations, endowments, sponsorship, gifts, grants and bequests from individuals and organisations, and to undertake fundraising activities;
- b. To promote and further the Purpose by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any means;
- c. To make payments, grants, loans or provide other financial assistance to any person on any terms;
- d. To enter into any arrangements with persons and to obtain and comply with the terms of obtaining any grant, subsidy, payment, rights, privileges or concessions;
- e. To acquire, obtain or in any way receive the benefit of any property (including rights to produce or present performances) and deal with property in any way;
- f. Produce, develop, create, licence and otherwise exploit, use and protect intellectual property;
- g. To maintain The Foundation assets;
- h. To operate any lawful trading activity and to adopt trading names as appropriate for any areas of activity;
- i. To borrow money or provide guarantees on any terms, conditions or security;
- j. To invest or lend money on such terms as the Trustees decide;
- k. To obtain and exercise the powers attached to shares in any company and to join in and become a member of any partnership, joint venture or other business enterprise;
- l. To engage and dismiss employees, assistants and contractors, agents or consultants and put in place agreements with them;
- m. To contribute to any tax charity (as defined in the Tax Act) having substantially similar purposes as the Purpose;
- n. To charge any person for use of The Foundation assets;
- o. To obtain insurance against any risks, liability, loss or damage;
- p. To create, control or approve regional or subsidiary trusts or organisations, groups or entities on such terms and conditions as the Trustees think fit, provided the purposes of such regional or subsidiary trusts or organisations are charitable and that their purposes include the Purpose or are substantially similar to the Purpose; and
- q. To make, alter, rescind and enforce regulations, policies and procedures of any type for the governance, management and operation of The Foundation and to appoint committees and set and monitor terms of reference as expedient to carry out the Purpose. Members of any committee need not be Trustees.

5.3 None of the powers in this Rule 5 are subsidiary or ancillary to any other power. The Trustees shall be entitled to exercise all or any of the powers independently of any other powers. In the

event of any ambiguity this Rule shall be construed so as to widen and not restrict the powers of The Foundation provided however that this Rule cannot detract from the charitable purposes of The Foundation.

6. Establishment of The Foundation and Amendment of Rules

- 6.1 The Foundation was originally established by Deed of Trust dated 31 March 1987 and there have been various subsequent amendments to the Deed of Trust and Rules.
- 6.2 Pursuant to the powers previously vested in the Board, the Board has approved these Rules as the new Rules to replace the previous Rules of The Foundation.
- 6.3 The Trustees agree to act as trustees of The Foundation on the terms set out in these Rules.
- 6.4 The Foundation shall comprise all The Foundation assets which shall be held on trust by the Trustees and shall be managed and administered on the terms set out in these Rules.
- 6.5 The Foundation shall continue until it is terminated according to law or it is wound up under Rule 16.

7. The Board

- 7.1 The governance of The Foundation and the exercise of all powers of The Foundation (except those that are restricted by these Rules) are delegated without further restriction, to be undertaken by the Board.
- 7.2 The Board shall comprise such numbers as determined by the Board provided that it is not less than five and not more than ten persons. Both genders must be represented on the Board.
- 7.3 Board members are either appointed by The Royal New Zealand Ballet in accordance with and subject to clause 7.4 (known as the “Royal New Zealand Ballet Trustees”) or are appointed by the Board (known as the “Independent Trustees”) to fill such vacancies as arise and are needed to bring the Board number up to the number determined by the Board in accordance with Rule 7.2. The Board shall assess new candidates for the Board on merit and may consider the following factors:
 - a. Prior experience in governance roles;
 - b. The level of knowledge and understanding of the performing arts;
 - c. Community connections and relationship with members and supporters of the arts sector;
 - d. Expertise in fundraising and/or investment;
 - e. The level of knowledge and experience in community and/or not for profit organisations;
 - f. The need for conflicts of interest to be minimised;
 - g. The need for a wide range of skills and experience on the Board;
 - h. The need for balance and diversity, including as to gender; and
 - i. The need for representation from different regions within New Zealand.

- 7.4 The board of The Royal New Zealand Ballet may by written notice appoint two persons to be Trustees (one or both of whom may be board members of The Royal New Zealand Ballet (“The Royal New Zealand Ballet Trustees”) provided that the majority of Independent Trustees must approve the appointees, such approval not to be unreasonably withheld. There can be no more than two persons who are The Royal New Zealand Ballet Trustees at any time. The board of The Royal New Zealand Ballet may remove either or both of The Royal New Zealand Ballet Trustees by written notice at any time and may replace them by the process in this Rule.. At no time will the majority of Trustees also concurrently be board members of The Royal New Zealand Ballet.
- 7.5 To obtain candidates for appointment to the Board as Independent Trustees, the Board may seek applications in such manner and timeframe from any sources and by any means it determines and it may approach ballet support organisations, sponsors and others to seek suitable candidates. A Trustee who has ceased to be a board member of The Royal New Zealand Ballet shall be eligible for appointment as an Independent Trustee.
- 7.6 The term of appointment of Trustees is three years from the date of appointment. Trustees are eligible for reappointment. The Board must, prior to re-appointing an Independent Trustee, consider the need for both new members and continuity within the Board.
- 7.7 An Independent Trustee is deemed to have vacated their office upon:
- a. Being adjudicated bankrupt;
 - b. Being declared of unsound mind or being the subject of a property order under the protection of Personal and Property Rights Act 1988;
 - c. Resigning from the Board or their term of office expiring;
 - d. Being determined by a majority of the Board to be unable or failing without acceptable excuse to fulfil the duties of a Board member;
 - e. Being sentenced to imprisonment for a criminal offence;
 - f. Becoming disqualified to be an officer of a charity in accordance with the Charities Act; or
 - g. Dying.
- 7.8 A person who is one of The Royal New Zealand Ballet Trustees is deemed to have vacated their office upon:
- a. Being adjudicated bankrupt;
 - b. Dying;
 - c. Resigning from the Board; or
 - d. Being removed on written notice by The Royal New Zealand Ballet.
- 7.9 The quorum for a Board meeting is fifty percent of the number of Trustees provided that there must at all times be a majority of Independent Trustees. This Rule is subject to Rule 7.12.
- 7.10 The Board must appoint one of its number to be the Chair. If the Chair is not available for any purpose then the Board shall appoint another person to fill the role of Chair for that purpose. The Chair must at all times be an Independent Trustee.
- 7.11 Subject to these Rules the Board may regulate its meetings as it determines. Any matters arising shall be determined by a simple majority of votes. In the case of a tied vote the Chair

shall have a casting vote. The Chair or any two Trustees may at any time summon a meeting of the Board.

- 7.12 If a vacancy arises in the Board and reduces the number of Trustees below the necessary quorum the Trustees must act for the purpose of increasing the number of Trustees but for no other purpose until a quorum is achieved.
- 7.13 The Board may delegate any of its powers to persons or to committees consisting of Trustees and/or any other persons determined by the Board and such persons and committees must act in accordance with the terms of any delegation and any Board policies relevant to it.
- 7.14 Board meetings may be held in person or by teleconference or by other means agreed by the Board by which those participating may hear each other simultaneously and in such circumstances all participating persons are deemed to be present.
- 7.15 A resolution in writing signed (or in respect of which acceptance is signified by any such written, electronic or other means deemed acceptable by the Board) by all the Trustees for the time being entitled to receive a notice of a meeting of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of
- a. Several separate documents in the same form each signed by one or more Trustees; or
 - b. Where acceptance is signified other than by signing a resolution it may consist of any record of acceptance from one or more Trustees that is deemed acceptable by the Board.
- 7.16 The Board shall ensure that minutes of its meetings are recorded.
- 7.17 Any irregularity or defect in any of the procedures or any failure to comply with any time period does not invalidate a Board meeting provided that the Chair of the meeting is satisfied that the meeting should continue despite the problem.

8. Annual Meeting

- 8.1 Within four months of each Balance Date the Board shall hold one of its meetings as the Annual Meeting at which the Board will:
- a. Receive and consider the annual report and review the Board's activities during the preceding year; and
 - b. Receive, consider and adopt the statements of financial performance and financial position for the preceding year.
- 8.2 The Board may invite at its discretion any other persons to attend the Annual Meeting and may confer speaking rights to any such persons.

9. Finance, Property, Accounts and Reporting

- 9.1 The Foundation assets will be properly governed by the Board and held in the name of The Foundation.
- 9.2 Financial transactions and bank accounts shall be undertaken and/or operated by such persons as authorised by the Board and in accordance with such policies as determined by the Board. In the absence of such authorisations and/or policy, bank accounts shall be operated on the signature or other electronic authorisation of the Chair.

- 9.3 The Board or any person authorised by the Board shall have the power to receive and give receipts for all legacies, donations, subscriptions or other moneys bequeathed, made or given to The Foundation and every such receipt shall be an effective discharge for the money stated to have been received.
- 9.4 Subject to the content of any Board policies:
- a. The Board will cause complete and accurate records to be kept in such manner as it thinks fit of all its receipts, credits, payments, liabilities and other matters necessary to show the true position of The Foundation;
 - b. The annual accounts of The Foundation shall be prepared in such manner and by any person approved by the Board; and
 - c. The Board may if it so determines have The Foundation's accounts audited by an independent auditor appointed by the Trustees.
- 9.5 The Board shall cause to be prepared or filed with the Inland Revenue Department, the Registrar of Charitable Trusts and the Charities Commission all necessary tax accounts, annual returns, reports, declarations, notices, certificates, reconciliations and other information required to be prepared or filed so as to allow The Foundation to retain its charitable status for taxation purposes and to meet all of its obligations under the Acts administered by the Inland Revenue Department, the Registrar of Charitable Trusts and the Charities Commission.

10. Common Seal

- 10.1 Documents to be executed by the Board must first be approved by the Board and shall be executed under its common seal and attested by any two of the Trustees, one of whom shall be the Chair or if the Chair is unavailable, then any two Trustees.

11. Prohibition on Private Pecuniary Profit and Personal Benefit

- 11.1 Nothing expressed or implied in these Rules shall permit the activities of The Foundation or any business carried on by or on behalf of or for the benefit of The Foundation to be carried on for the private pecuniary profit of any individual.
- 11.2 All income, benefit or advantage shall be applied to the Purpose.
- 11.3 No Trustee or any person associated with a Trustee shall participate in or materially influence any decision made by the Board in respect of the payment to or on behalf of that Trustee or associated person of any income, benefit or advantage whatsoever.
- 11.4 Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
- 11.5 The purpose and effect of this Rule shall not be removed from these Rules and shall be included and implied into any document replacing these Rules.

12. Declarations of Interest

- 12.1 No Trustee shall vote on any matter in which he or she has any personal or pecuniary interest or in which any company or other body in which the Trustee has a personal or financial interest itself has any pecuniary interest. Notwithstanding the provisions of this Rule, The Royal New Zealand Ballet Trustees may vote on any matter affecting or involving The Royal New Zealand Ballet.

- 12.2 Any Trustee shall declare any such interest in writing as soon as the Trustee concerned becomes aware of the existence of the interest, the declaration to include all relevant detail needed to result in a full and fair disclosure. All Trustees shall act in good faith in all such matters. Provided however that on appointment as a Trustee, all of The Royal New Zealand Ballet Trustees shall be deemed to have satisfied and continue to have satisfied the provisions of this Rule in respect of any matter affecting or involving The Royal New Zealand Ballet.

13. Remuneration of Trustees and Payments of Expenses

- 13.1 None of the Trustees shall be paid any remuneration for time spent as a Trustee, but shall be entitled to such expenses incurred in that capacity as the Board may from time to time authorise or ratify by resolution. The intent is that no Trustee shall derive pecuniary gain from his or her office as a Trustee or from any act done in the capacity of a Trustee, but may be paid expenses if the Board so resolves.
- 13.2 Subject to Rule 11, any Trustee shall be entitled to be paid all usual professional, business and trade charges for business transacted, time expended and all acts done by him or her or any employee or partner of his or hers in connection with The Foundation other than acting as a Trustee.
- 13.3 No Trustee receiving any remuneration referred to Rule 13.2 shall take part in any deliberations or proceedings relating to the payment or otherwise of that remuneration nor shall that Trustee in any way determine or materially influence directly or indirectly the nature or amount of that payment or the circumstances in which it is to be paid. Any such remuneration must be approved in writing by the Board.

14. Alterations and Additions

- 14.1 Subject to ensuring that the purpose and effect of Rules 11, 13, 14 and 16 are not altered or amended to jeopardise the charitable status of The Foundation, the Board may resolve to amend or add to any of these Rules.
- 14.2 Written notice of any proposal to effect an alteration or addition to this Rule, Rule 4.1, Rule 7.4 or Rule 16 (which notice must include a copy of the proposed alterations or additions) must be provided to The Royal New Zealand Ballet at least 30 days in advance of any proposed meeting at which such proposal will be discussed. Any resolution on a proposal which has not complied with this requirement will be invalid.
- 14.3 A resolution to effect any alteration or addition to these Rules must be passed by unanimous resolution of all of the Trustees at a meeting of the Board, the quorum for which will be all of the Trustees.
- 14.4 No amendment may be made to these Rules in any respect which would have the effect of causing The Foundation to cease to be a charitable trust or to amend the Purpose to include any objective which is not a charitable objective or one to be achieved predominantly outside New Zealand.
- 14.5 Notwithstanding anything set out in Rules 14.1 or 14.2 the Board shall amend these Rules as is essential to ensure these Rules are not contrary to the Tax Act or the Charities Act or any other law.

15. **Liability of Trustees**

- 15.1 The Trustees are expressly authorised to exercise the powers of The Foundation under Rule 5 notwithstanding that The Foundation assets may be subject to any liability or liabilities and (subject to this Rule 15) the Trustees shall not be liable for any loss occurring on the realisation of any of The Foundation's assets.
- 15.2 To the extent permitted by law, no Trustee shall be subject to any duties except:
- a. The duty to act honestly and the duty not to commit wilfully any act known to be a breach of trust; and
 - b. The duty not to omit wilfully any act when the omission is known by the Trustee to be a breach of trust.
- 15.3 A Trustee is not liable to The Foundation except for the consequences of any act or omission or for any loss which is in any case attributable to the Trustee's own dishonesty, wilful misconduct, or gross negligence.
- 15.4 No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust by that co-Trustee.
- 15.5 A Trustee shall be indemnified by and out of The Foundation assets for and in respect of any loss or liability incurred by the carrying out or omission of any function duty or power of the Trustees under these Rules unless such loss or liability is attributable to such Trustee's, wilful misconduct or gross negligence.
- 15.6 The Board may effect insurance for the Trustees and will meet all costs associated with such insurance.

16. **Winding-Up**

- 16.1 The Foundation may be wound up by unanimous resolution of all the Trustees at a meeting of the Board called for that purpose.
- 16.2 In the event of The Foundation being wound up and after all liabilities of The Foundation have been discharged the Board shall give all The Foundation assets that remain to The Royal New Zealand Ballet or any successor of The Royal New Zealand Ballet.
- 16.3 Should The Royal New Zealand Ballet have ceased to exist and there is no successor thereof, then in that case to such trusts or organisations approved by the Board (and if more than one are approved then in such shares as determined by the Board) and which are based in New Zealand and have purposes which are exclusively charitable . Consideration should be given to entities with aims that are sympathetic to the purpose of The Foundation.
- 16.4 The receipt of the treasurer or secretary or other proper officer of such trusts or organisations shall be a sufficient discharge to the Board and the Board will not be bound to further see the application of those funds and assets.
- 16.5 If the Board is unable to make such decisions in Rule 16.3, the trust assets shall be disposed of in accordance with the directions of the High Court under the Charitable Trusts Act 1957.