

This is the document referred to in the Notice of AGM to be held on 25 November 2024, signed by the Chairman for identification:



**DEFENCE BANK
LIMITED**

ABN 57 087 651 385

Constitution

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(As accepted and amended by the membership at the 30th Annual General Meeting on 28 November 2005, and further amended at the 37th Annual General Meeting on 26 November 2012, at the 39th Annual General Meeting on 24 November 2014 the 40th Annual General Meeting on 23 November 2015, at the 42nd Annual General Meeting on 20 November 2017, and at the 45th Annual General Meeting on 23 November 2020.)

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Preamble

The mutual is a public company limited by shares organised on the basis of the following Principles of Mutuality, ~~as though it were a credit union~~:

Principles of Mutuality

Borrowers Must be Members

1. Subject to the exceptions in Principles 2 and 3, a ~~credit union~~mutual may not grant financial accommodation to a person who is not a member. However, a ~~credit union~~mutual may accept a deposit from a person who is not a member.
2. A ~~credit union~~mutual may grant financial accommodation to a body that does not have the power to acquire, or that the law prohibits from acquiring, the ~~credit union~~mutual's shares.
3. A ~~credit union~~mutual may grant financial accommodation to another ADI.

Membership and Member Shares

How to become a member

4. A person can only become a member by subscribing for a member share.

How many member shares a ~~credit union~~mutual may issue a person

5. Subject to the exception in Principle 6, a ~~credit union~~mutual may only issue one member share to any person.
6. A trustee for an unincorporated association may be issued 1 member share in the trustee's own right, and 1 member share as trustee for the unincorporated association.

Consideration paid for membership shares

7. A ~~credit union~~mutual may issue member shares as wholly paid or partly paid.
8. A ~~credit union~~mutual may only issue a member share to a person in return for valuable consideration.
9. The person must provide consideration in cash or, in relation to partly paid member shares, partly or wholly in the form of an obligation to pay cash.

Voting

10. A member share must confer the right to 1 vote, and only 1 vote, at meetings of the ~~credit union~~mutual's members.

Dividends and Surplus

11. A member share may confer a right to participate in the ~~credit union~~mutual's profits through payment of dividends.
12. A member share must confer a right to participate in surplus when the ~~credit union~~mutual is wound up.
13. Any participation in profit or surplus must be on equitable terms.

Redemption and Transfer

14. A member share must confer on the member a right to redeem the member share on request, subject only to:
 - (a) compliance with prudential standards or prudential regulations; and
 - (b) any period of notice set out in the ~~credit union~~mutual's constitution.
15. Subject to the exceptions in Principle 16, member shares may not be transferred.
16. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

Additional Shares

Definition

17. All shares issued by a ~~credit union~~mutual other than member shares are additional shares.

Voting

18. Subject to the exceptions in Principle 19, an additional share must not confer the right to vote.
19. Additional shares may confer the right to vote, at meetings of the holders of additional shares, on questions affecting the continuing existence of the ~~credit union~~mutual.

Dividends and Surplus

20. An additional share may confer the right to participate in the ~~credit union mutual~~'s profits through payment of dividends.

21. An additional share may confer a right to participate in surplus when the ~~credit union mutual~~ is wound up but only to the extent of:

- (a) repayment of capital paid on the additional shares; and
- (b) payment of arrears of cumulative dividends.

22. The right to participate in profits and surplus conferred by additional shares may be preferred, equal or deferred to the rights conferred by the member shares.

Redemption and Transfer

23. An additional share may confer on the holder of the additional share a right to redeem or to transfer the additional share.

Accumulation of Securities

24. Accumulation of securities issued by a ~~credit union mutual~~ must be restricted so that no person, or group of associated persons, may exercise a significant degree of influence over the affairs of the ~~credit union mutual~~.

Directors

25. Only a member of the ~~credit union mutual~~ may be a director of the ~~credit union mutual~~.

These Principles of Mutuality are not binding, except to the extent that the Constitution expressly provides otherwise.

Constitution

Division 1. — Introductory Matters

1.

1.1 Definitions

In this Constitution, unless the context requires otherwise:

ADI means an Authorised Deposit-taking Institution, being a body corporate that APRA has authorised to conduct banking business in Australia under the *Banking Act 1959* (Cth).

APRA means the Australian Prudential Regulation Authority.

board means the board of directors.

candidate means a person whom the Nominations Committee determines to be a candidate under Appendix 3 Clause A3-2(6).

common bond refers to the common bond of membership set out in Rule 3.4.

deposit means the placement of money in an account that the mutual conducts in the ordinary course of its banking business.

director means a director for the time being of the mutual.

dormant joint member has the meaning set out in Rule 4.5.

electronic voting system means a system approved by the board which enables members to submit their vote by electronic means.

financial accommodation means:

- (a) an advance;
- (b) money paid for, on behalf of or at the request of a person (other than by drawing on the person's deposit account with the mutual);
- (c) a forbearance to require payment of money owing on any account; and
- (d) a transaction that, in substance, effects a loan or is regarded by the parties to the transaction as a loan,
- (e) that the mutual provides or enters in the ordinary course of its banking business.

general meeting means a general meeting of the members.

material personal interest has the same meaning as in Part 2D.1 of the *Corporations Act*.

MCI means a share as described in Appendix 1 Division 2 and stands for 'mutual capital instrument'.

MCI Holder means the holder of an MCI issued by the mutual.

MCI Issue Price, in relation to an MCI, means the amount payable by a person in issue of an MCI, in accordance with the MCI Issue Terms.

MCI Issue Terms, in relation to an MCI, means the terms on which an MCI are issued.

member means a person (other than an MCI Holder) whose name the mutual has entered for the time being in the Register of Members it keeps under the *Corporations Act*, or a person who was a member of another ADI that transferred its business and members to the mutual under the Financial Sector (Transfers of Business) Act 1999 (Cth).

member share means a share as described in Appendix 1 Division 1.

mutual means the company described in this Constitution.

Nominations Committee means the committee appointed by the board in accordance with Appendix 4.

prudential standard means:

- (a) any prudential standard that APRA determines under the Banking Act 1959 (Cth);
- (b) any prudential regulation made under Banking Act 1959 (Cth); and
- (c) any APRA transitional prudential standard applying to the mutual under the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations* 1999 (Cth)

Banking Legislation Commentary

APRA may determine prudential standards under *Banking Act* 1959 (Cth) s 11AF.

The Treasurer may make prudential regulations under *Banking Act* 1959 (Cth) s 11A.

Section 12 and Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations* 1999 (Cth) specify the APRA transitional prudential standards that apply to ~~credit union~~mutuals.

secretary means a secretary for the time being of the mutual

share means a share in the capital of the mutual and includes member shares and MCIs.

subscription price means the amount payable by a person on subscription for a *member share*.

1.2 Interpretation

- (1) In this Constitution, unless the context requires otherwise:
 - (a) the singular includes the plural and vice versa;
 - (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
 - (c) words and expressions defined in the *Corporations Act* have the same meaning in this Constitution;
 - (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
 - (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
 - (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument; and
 - (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
 - (i) that replaces it; or

- (ii) to which substantially all the powers and functions relevant to this Constitution are transferred.

- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the **mutual** complying with the *Corporations Act* requirements that apply to removal or modification of constitutional provisions.

1.3 Time

Unless expressly provided otherwise, when this Constitution, or any notice given under this Constitution, states a time or a period of time, the time stated is, or the period of time is calculated by reference to, Standard Time or Summer Time, as the case may be, at the mutual's registered office.

1.4 Replaceable Rules do not Apply

The replaceable rules in the *Corporations Act* do not apply.

1.5 Notices

- (1) This Rule applies to all notices and documents that the *Corporations Act* or this Constitution requires a party to this Constitution to send to another party to this Constitution.

Corporations Act Commentary

The parties to the Constitution are the mutual and its members, other shareholders, directors and secretaries: see s140(1).

- (2) In this Rule, business day means a day that is not:
 - (a) a Saturday or Sunday; or
 - (b) a public holiday or bank holiday in the place where the notice is received.
- (3) A person sending a notice must do so in writing and must address it to the recipient at the following respective addresses:
 - (a) if to the mutual — at its registered office or such other address as the mutual specifies to members from time-to-time; and
 - (b) if to a member — at the member's address appearing on the Register of Members from time-to-time, or in accordance with Subrule (6).

Note: Subrule 3.3(3) deals with sending notices to joint members. Rule 4 contains specific rules about notices to be given before the mutual takes certain action affecting a member share.

- (4) A person may send a notice or other document to another person in any of the ways set out in column 2 of the table. The other person receives the notice at the time set out in column 3:

| <i>Delivery Method</i> | | <i>Time Person Receives Notice</i> |
|------------------------|--|---|
| 1 | Hand delivering the notice personally | The other person receives the notice: <ul style="list-style-type: none"> (i) if hand delivered before 5:00pm on a business day — on that business day (ii) if hand delivered after 5:00pm on a business day — on the next business day (iii) if hand delivered on a day other than a business day — on the next business day |
| 2 | Sending the notice by pre-paid post | The other person receives the notice on the third business day after posting unless it is actually delivered earlier |

| | Delivery Method | Time Person Receives Notice |
|----------|---|---|
| 3 | Sending the notice by facsimile transmission | <p>The other person receives the notice:</p> <ul style="list-style-type: none"> (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day. <p>This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful.</p> |
| 4 | Sending the notice by electronic means | <p>The other person receives the notice:</p> <ul style="list-style-type: none"> (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day <p>This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address</p> |

- (5) If a person sends a member a notice in accordance with this Rule, any person to whom that member transfers or transmits a share is taken to receive the notice when the first person sent the member the notice.
- (6) Where a member has provided an electronic address to the mutual, notices sent by the mutual under this Constitution may be sent by electronic means to the member's last known electronic address wherever the law permits this.
- (7) Where an MCI Holder has provided an electronic address to the mutual, notices sent by the mutual under this Constitution may be sent by electronic means to the MCI Holder's last known electronic address wherever the law permits this.

Corporations Act Commentary

The *Corporations Act* may require notices in relation to a Members' Meeting to be sent to the address appearing on the Register of Members or a different address nominated by the member. Other kinds of notices can be sent in accordance with the requirements of this Constitution.

1.6 MCI mutual entity

The mutual is intended to be an MCI mutual entity for the purposes of the *Corporations Act*.

Corporations Act Commentary

A 'mutual entity' for the purposes of the *Corporations Act* is an MCI mutual entity and able to issue MCIs if its Constitution states that it is intended to be an MCI mutual entity for the purposes of the Act: see s167AC(d).

Division 2. — Objects & Limit on Powers

2.

Corporations Act Commentary

The *Corporations Act* provides that the mutual has the legal capacity and powers of an individual and of a body corporate: see s 124.

The *Corporations Act* allows the Constitution to set out the mutual's objects and to expressly limit the mutual's exercise of its powers: see s 125. The statement of objects is optional. However, the limit on power in Rule 2.2 is a requirement of the Principles of Mutuality.

2.1 Objects

The mutual has the following objects.

- (a) to raise funds by subscription, deposit or otherwise, as authorised by the *Corporations Act* and *Banking Act 1959* (Cth);
- (b) to apply the funds in providing financial accommodation to members, subject to the *Corporations Act* and *Banking Act 1959* (Cth);
- (c) to encourage savings amongst members;
- (d) to promote co-operative enterprise;
- (e) to provide programmes and services to members to assist them to meet their financial, economic and social needs;
- (f) to promote, encourage and bring about human and social development among individual members and within the larger community within which members work and reside; and
- (g) to further the interests of members and the communities within which they work and live through co-operation with:
 - (i) other ~~credit union~~mutuals and co-operatives, and
 - (ii) associations of ~~credit union~~mutuals and co-operatives, locally and internationally.

2.2 Borrowers Must be Members

The mutual may only provide financial accommodation to its members. However, this Rule does not apply to the following persons who are not members:

- (a) bodies that do not have the power to acquire, or that the law prohibits from acquiring, the mutual's shares; or
- (b) ADIs.

Division 3. — Membership

3.

3.1 Admission to Membership

Corporations Act Commentary

A person becomes a member of the mutual if the person agrees to become a member and the mutual enters the person's name in the Register of Members: see s 231.

An MCI Holder or another category of shareholder may be entered in the Register of Members but does not have the rights of a member under this Constitution unless they are admitted as a member.

- (1) Subject to any other Rule allowing admission of members, the mutual may admit a person as a member only if:
- (a) the person makes a written application in a form the mutual requires;
 - (b) the person provides evidence, satisfactory to the mutual, that the person is eligible to be a member under the common bond;
 - (c) the person applies for a member share; and
 - (d) the person either:
 - (i) pays in cash; or
 - (ii) agrees to pay, as and when required under Rule 6,the subscription price for the member share.

Note: The mutual may also admit a person as a member by registering a transfer or transmission of a member share to the person under Rule 9.3, Rule 10.2, Rule 10.3 or Rule 10.4.

- (1A) The mutual may admit a person as an MCI Holder only if:
- (a) the person makes a written application in a form the mutual requires;
 - (b) the person applies for an MCI; and
 - (c) the person pays in cleared funds the MCI Issue Price.
- (2) The board has an absolute discretion in exercising the mutual's power to admit members without any obligation to give a reason for not admitting a person as a member.
- (3) When the mutual admits a person as a member, the mutual must:
- (a) issue the member share to the person;
 - (b) enter the person's particulars in the Register of Members as required by the *Corporations Act*; and
 - (c) give the person notice that it has admitted the person as a member.
- (3A) When the mutual admits a person as an MCI Holder, the mutual must:
- (a) issue the MCI to the person;

- (b) enter the person's particulars in the Register of Members as required by the *Corporations Act*, and
- (c) give the person notice that it has admitted the person as an MCI Holder.

3.2 Delegation of Power to Admit Members

- (1) The board may delegate to officers of the mutual its power to admit or reject applications of potential members. The delegation must not include authority to further delegate the power to admit or reject members.
- (2) The board may delegate to a committee of directors (at the board's option, together with one or more executive officers of the mutual) its power to accept applications to become an MCI Holder and to determine MCI Issue Terms. The delegation must not be for a period of more than 6 months and must not include authority to further delegate the power.

3.3 Joint Members

- (1) The mutual may admit 2 or more persons eligible for admission under Subrule 3.1(1) as a joint member of the mutual.
- (2) The persons constituting the joint member may determine the order in which their names appear in the Register of Members. If the persons constituting the joint member do not do so, the mutual may determine the order in which their names appear in the Register of Members.
- (3) The person named first in the Register of Members is the primary joint member. The mutual may duly send any notice, certificate or other document to the joint member by sending it to the primary joint member. Only the primary joint member is entitled to vote on behalf of the joint member.
- (4) At any time, the joint member may give the mutual a notice requiring the mutual to change the primary joint member or otherwise change the order in which their names appear in the Register of Members. Each person constituting the joint member must sign the notice. The mutual must change the Register of Members as soon as practicable after receiving the notice.
- (5) Any person constituting a joint member may give an effective receipt for any dividend, distribution on winding-up or return of capital in relation to the joint member's shares.
- (6) The mutual may provide financial accommodation to, the joint member or to any person constituting the joint member.
- (7) The persons constituting a joint member are jointly and individually liable for any liability that the joint member may have in relation to the joint member's shares.
- (8) In this Constitution, the joint member is taken to be a person separate to the persons constituting the joint member.

Corporations Act Commentary

The *Corporations Act* recognises registration of joint members of a company. The joint members: are taken to be a **single** member of the company; and may also be members in their own right or jointly with others: see s 169(8).

3.4 Common Bond

A person is eligible to be a member under any one of the following categories:

- (a) the person has an affiliation with the defence of Australia;
- (b) the person is in a category determined by the board;
- (c) the person is a member but has ceased to be eligible to be a member in accordance with the above categories.

Division 4. — Termination of Membership

4.

4.1 Removal of the Member's Name from the Register of Members

The mutual can remove the member's name from the Register of Members if:

- (a) the mutual redeems the member's member share under Rule 4.2, Rule 4.3, Rule 4.4 or Rule 4.6;
- (b) the mutual forfeits the member's member share under Subrule 6.3(2);
- (c) the member surrenders the member's member share under Subrule 6.3(5);
- (d) if the member is an individual — the member:
 - (i) dies;
 - (ii) becomes a bankrupt and the mutual registers the member's trustee in bankruptcy as the holder of the member's member share under Rule 10.3; or
 - (iii) becomes mentally incapable and the mutual registers the member's trustee or guardian as the holder of the member's member share under Rule 10.4;
- (e) if the member is a body corporate — the member is deregistered or dissolved; or
- (f) if the member is a trustee for an unincorporated association — the mutual registers the transfer of the member's member share to another person who is to act as trustee for the unincorporated association;

In the case of a joint member, the mutual can remove one or more of the joint member's names from the Register of Members where any of the persons constituting the joint member becomes a dormant joint member under Rule 4.6.

The mutual can remove an MCI Holder's name from the Register of Members if the MCI is redeemed under Rule 4.7, transferred under Rule 9.10 or if the MCI is cancelled under the process in paragraph A1-26 and A1-27 of Appendix 1.

Note: Rule 2.2 restricts the mutual from providing further financial accommodation to, persons who cease to be members.

4.2 Member's Request for Termination

- (1) A member may request termination of membership but only if the member has repaid all financial accommodation and discharged all other obligations to the mutual.
- (2) If a member makes a request under Subrule (1), the mutual must redeem the member's member share as soon as practicable after receiving the request. However, the mutual may defer redeeming the member's member share until the board is satisfied that the member has repaid all financial accommodation and discharged all other obligations to the mutual.

4.3 Termination by the Board

- (1) The mutual may redeem a member's member share by board resolution if:
 - (a) the member fails to discharge the member's obligations to the mutual;
 - (b) the member is guilty of conduct that the board reasonably considers to be detrimental to the mutual;

- (c) the member obtains membership by misrepresentation or mistake; or
 - (d) the member, in a single legal capacity, is the holder of more than one member share (and if so, the board may determine which additional member share or member shares to redeem in order to ensure that the member has only one member share in that legal capacity)..
- (2) The board may by board resolution delegate its power under Subrule (1) to redeem a member's member share, to a committee of directors, to a nominated director, or to an officer or officers of the mutual. The delegation must not include authority to further delegate the power to redeem a member's member share.
- (3) A member's member share is redeemed under this Rule 4.3 upon:
- (a) the board resolving that the member's member share be redeemed; or
 - (b) a person or persons to whom the board has delegated its power under Subrule (2) directing the officer in charge of member records to make a record in the Register of Members that the member's member share has been redeemed.
- (4) The mutual must give notice of a proposal to redeem a member's member share under Subrule (1) to the member at least 14 days before either the board considers the proposed resolution, or the board's delegate under Subrule (2) makes a decision to cause the member share to be redeemed. The notice must:
- (a) inform the member that they have the right to be heard by the board before the decision to redeem their member share is made;
 - (b) inform the member whether the decision to redeem the member's member share will be by board resolution or by a delegate, and
 - (c) if the decision is proposed to be made by a delegate, state that the member may by written notice request that the decision whether to redeem the member's member share be taken by the board.
- (5) If a member's member share is proposed to be redeemed through the decision of a delegate under Subrule (2) and the member requests that the decision whether to redeem the member's member share be made instead by the board, a delegate under Subrule (2) may not make the decision to redeem that member's member share or member shares. Instead, the mutual must notify the member of the time and place of the next board meeting scheduled to occur 14 days or more after the member's notice is received, and the question of whether that member share is to be redeemed is to be made at such board meeting.
- (6) At the time the board considers a proposed resolution referred to in Subrule (1), the member is entitled:
- (a) to be present with or without the member's legal representative; and
 - (b) to be heard, either in person or through the member's legal representative.
- (7) On redeeming the member share that is redeemed under the board's power under Subrule (1) or that power as delegated under Subrule (2), the mutual may pay any amount payable on redemption of the member share to the member by either:
- (a) sending a cheque to the member's address as set out in the Register of Members; or
 - (b) crediting any of the member's accounts with the mutual, at the time the member share is redeemed.

4.4 Termination Where Accounts Dormant

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise and does not apply to a first home saver account to the extent that the *First Home Saver Account Act 2008* (Cth) provides otherwise.

- (2) The mutual may determine that a member's deposit accounts are dormant if the member has not initiated any transactions in relation to a deposit account over an uninterrupted 12 month period. Where all of a member's deposit accounts have been determined to be dormant, the mutual may redeem the member's member share by board resolution.
- (2A) The board may by board resolution delegate its power to redeem a member share under Subrule (2) to a committee of directors, a nominated director, or an officer or officers of the mutual. The delegation must not include authority to further delegate the power to redeem a member share where a member's deposit accounts are dormant. The delegate may make the determination by directing the officer in charge of member records to make a record in the Register of Members that the member's member share has been redeemed.
- (3) The mutual must send notice of the proposed redemption of a member share under Subrule (2) or (2A) to the member at least 28 days before the redemption is proposed to occur.
- (4) On redemption of the member share, the mutual must pay any amount payable on redemption of the member share into the member's account.
- (5) If the mutual redeems a person's member share under this Rule, the person may require the mutual to reinstate the person's deposit accounts at any time before the mutual pays the money in the deposit account in accordance with the relevant unclaimed money legislation. If the person requires the mutual to reinstate the person's deposit accounts:
 - (a) the mutual must reinstate the person's deposit accounts as soon as practicable; and
 - (b) if the mutual has redeemed the member's member share — the mutual must issue a member share to the person and may debit the member's deposit account for the subscription amount if the person has not agreed to pay the subscription price under Rule 6.

Banking Legislation Commentary

Section 69 of the *Banking Act 1959* (Cth) deals with unclaimed money.

4.5 Severance of Joint Member Where Accounts Dormant

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise and does not apply to a first home saver account to the extent that the *First Home Saver Account Act 2008* (Cth) provides otherwise.
- (2) In relation to a joint member, the mutual may determine that the deposit accounts of one or more of the persons constituting the joint member (dormant joint members) are dormant and that the deposit accounts of one or more of the other persons constituting the joint member (non-dormant joint members) are not dormant, if the dormant joint member has not initiated any transactions in relation to a deposit account over an uninterrupted 12 month period. Where all of a dormant joint member's deposit accounts have been determined to be dormant, the mutual may, by board resolution, determine that the dormant joint member has ceased to be one of the persons constituting the joint member.
- (3) The board may by board resolution delegate its power under Subrule (2) to determine that a dormant joint member has ceased to be one of the persons constituting the joint member, to a committee of directors, a nominated director, or an officer or officers of the mutual. The delegation must not include authority to further delegate the power mentioned in Subrule (2). The delegate may make the determination by directing the officer in charge of member records to make a record in the Register of Members that the dormant joint member is no longer one of the persons that constitutes the joint member.
- (4) Following a resolution under Subrule (2) or a determination under Subrule (3), where the joint member is constituted by:

- (a) 2 or more other joint members that are not dormant joint members, those joint members will from that point forward constitute the joint member to the exclusion of the dormant joint member(s), and
- (b) only one other joint member that is not a dormant joint member, that joint member from that point forward holds the member share solely, to the exclusion of the dormant joint member(s), and will from that point be a member rather than a joint member.

From that point forward, the dormant joint member (or dormant joint members, if more than one) cease to have rights and are released from their obligations under this Constitution, and the remaining joint member or joint members instead have those rights and owe those obligations solely (if there is only one non-dormant joint member), or jointly with each other non-dormant joint member in relation to that joint member share.

- (5) At least 28 days before making a board resolution under Subrule (2) or a determination under Subrule (3), the mutual must send notice of the proposed action to each of the dormant joint members and each of the other joint member whose rights and obligations would be affected by the amendment of the Register of Members, at the last known electronic address of each such joint member, or if no electronic address is known, the address as shown on the Register of Members. If any of the affected joint members object to the proposed action, then the determination must be made by the board under Subrule (2) and not by a delegate under Subrule (3), and the board shall have regard to any written submissions provided by an affected joint member.
- (6) If the mutual amends the Register of Members under this Rule, any dormant joint member that is removed from the Register of Members may by written request require the mutual to reinstate the person's entry in the Register of Members as a member (and not as one of the persons constituting the joint member) at any time before the First anniversary of the amendment of the Register of Members, provided that the dormant joint member agrees to pay, as and when required under Rule 6, the subscription price for the member share.

4.6 Termination of Member Share Issued As a Result of Fraud or Unlawful Activity

- (1) Without limiting Rule 4.3, the mutual may redeem a member share where there are reasonable grounds to believe that fraudulent or unlawful activity has caused the member share to be issued in the name of a person without the knowledge or consent of the person, or in the name of a deceased person or a fictitious person. In these circumstances, the mutual need not notify the person in whose name the member share has been issued of the redemption of the member share. The amount payable on redemption of the member share (if any) is to be held in a suspense account until such time as it is required under the *Banking Act* 1959 to be dealt with as unclaimed moneys. The member share is to be redeemed promptly after:
 - (a) the board resolves that it is satisfied that there are reasonable grounds to believe that the member share was issued in circumstances mentioned in this Subrule; or
 - (b) a person delegated by a board resolution made for the purposes of this Subrule, determines in writing that the person is satisfied that there are reasonable grounds to believe that the member share was issued in circumstances mentioned in this Subrule.

4.7 Redemption of MCI

- (1) At any time that the MCI Issue Terms permit, the mutual may at its sole option redeem any MCI by paying to the MCI Holder, in clear funds, the MCI Issue Price, or a lesser amount determined in accordance with the MCI Issue Terms together with all Dividends accrued but unpaid up to and including the date of redemption. **Note:** accrual of Dividends is subject to Subrules 7.4 and 7.5.
- (2) To avoid doubt, where more than one MCI has been issued and has not been cancelled or redeemed:
 - (a) no MCI Holder shall have any claim against the mutual in relation to the mutual's decision of which MCI to redeem or not redeem at any time; and

- (b) the mutual may redeem any MCI under this Rule whether or not the MCI or any other MCI is subject to suspended or reduced Dividends at the relevant time under Rule 7.5,

except to the extent the redemption would be inconsistent with the MCI Issue Terms of any MCI that has been issued and has not at the relevant time been redeemed or cancelled. However, the mutual may only redeem an MCI at a time that any MCI is subject to suspended or reduced Dividends if the mutual considers that the redemption has a material likelihood of reducing the duration of that suspension or reduction of Dividends.

Division 5. — Issue of Shares

5.

5.1 Classes of Shares

The mutual may only issue:

- (a) member shares; and
- (b) MCIs.

5.2 Board Power to Issue Shares

The board may exercise the mutual's power to issue shares to the exclusion of the general meeting.

5.3 Restrictions on Issue of Member Shares

(1) The mutual must not issue:

- (a) options to subscribe for member shares;
- (b) securities that may be converted to member shares; or
- (c) securities with pre-emptive rights to member shares.

(2) The mutual may only issue member shares in accordance with Subrule 3.1(3).

(3) The mutual may only issue member shares to persons on the basis that the person pays the full subscription price in cash on issue or agrees to pay, as and when required under Rule 6, the full subscription price.

(4) The mutual may only issue 1 member share to any person. However, the mutual may issue to a trustee for an unincorporated association:

- (a) 1 member share to the trustee in the trustee's own right; and
- (b) 1 member share to the trustee as trustee for the unincorporated association.

Note: The mutual can issue a member share to a person who already constitutes a joint member: see Rule 3.3.

5.4 MCIs

MCIs may be issued and may be cancelled in accordance with the procedures set out in Division 2 of Appendix 1, and have the rights described in Division 2 of Appendix 1.

Division 6. — Calls, Forfeiture and Liens

6.

6.1 Payment of Calls on Shares

Corporations Act Commentary

The *Corporations Act* states that a member holding partly paid shares must pay calls on them in accordance with the terms of issue. This Rule sets out the process for the board to make a call for payment on partly paid shares: see s 254M.

- (1) This Rule applies if some or all of the subscription price for a share is payable on the mutual calling up payment of some or all of the unpaid subscription price. This Rule applies in relation to a share subject to:
 - (a) any restrictions in the terms of issue for the share; and
 - (b) any special resolution providing that the mutual can only call up some or all of the subscription price for shares if the mutual becomes an externally-administered body corporate

Note MCIs may only be issued as fully paid shares.

- (2) The mutual may call for payment of any amount of the unpaid subscription price for a share by board resolution. The mutual must give a member holding a share on which the mutual has made a call a notice setting out how much, when and how the member must make the payment. The mutual must give the notice at least 14 days before the time the member must pay the call.
- (3) The mutual may revoke or postpone a call on a share by board resolution. The mutual must give each member holding a share for which the mutual has revoked or postponed a call notice as soon as practicable after the board resolution.
- (4) In any proceeding to recover unpaid instalments, a member is conclusively presumed to be liable for a call if:
 - (a) the mutual's minutes record the board resolution calling for payment of the amount of the call;
 - (b) the member's name appeared in the Register of Members as holder of the share on the date of the board resolution; and
 - (c) the mutual gave the member a notice in accordance with Subrule (2).
- (5) At any time, the mutual may accept from a member prepayment of any amount of the unpaid subscription price on a share.

6.2 Effect of Failure to Pay Unpaid Amounts

- (1) This Rule applies if a member does not pay any amount of the unpaid subscription price for a share at the time the amount becomes due. This Rule does not limit any other remedies that the mutual may have against the member, provided that, other than giving notice to the member under Subrule 6.1(2), the mutual must not undertake any action to recover the unpaid subscription price which would be likely to involve expense to the member that would be disproportionate to the amount of unpaid subscription price.
- (2) The member must pay:
 - (a) the amount due on the share; and
 - (b) subject always to Subrule (1), all costs and expenses that the mutual incurs (including, without limitation, legal expenses on a solicitor and own client basis or full indemnity basis, whichever is the higher) because the member did not pay the amount when it became due.

The mutual may waive all or part of the expenses payable under this Subrule by board resolution. The cost of sending the notice under Subrule (2) or a notice under Subrule 6.3(2) is not payable by the member.

- (3) At any time while the amount payable under Subrule (2) remains unpaid in respect of a share, the mutual may give the member a default notice:
 - (a) setting out:
 - (i) how much is due; and
 - (ii) when the member must pay the amount due; and
 - (b) stating that, if the member does not pay the amount due by that date, the member will forfeit the share.

The date for payment must be at least 14 days after the date on which the mutual gives the member the default notice. In the absence of any manifest error, the default notice is conclusive evidence of the amount that the member must pay the mutual as at the date the mutual issues the default notice.

6.3 Forfeiture and Surrender

- (1) If a member does not comply with the default notice issued under Rule 6.2(3), the mutual may forfeit any share to which the default notice relates by board resolution. However, the member may always comply with the default notice at any time before forfeiture occurs.
- (2) The mutual may give the member a notice of forfeiture. In the absence of a manifest error, the notice is conclusive evidence of the facts stated in the notice against all persons claiming to be entitled to the share.
- (3) The forfeited shares become the mutual's property. The mutual may redeem, sell or otherwise dispose of the forfeited shares on the terms and in the manner that the board determines.
- (4) The transferee's title is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the shares. The transferee is not required to see the application of the purchase money.
- (5) A member may surrender any share to which a default notice relates. The mutual may deal with surrendered shares in the same way as it deals with forfeited shares.
- (6) A member whose shares have been forfeited remains liable to pay the mutual the amounts due:
 - (a) less any amount that the mutual must pay the member on redemption of the shares; and
 - (b) less any amount that the mutual receives on sale or disposal of the forfeited shares.

6.4 Liens

- (1) The mutual may at any time exempt a share wholly or in part from this Rule by board resolution.
- (2) The mutual has a first and paramount lien on:
 - (a) every partly-paid share that a member holds; and
 - (b) the proceeds of sale of every partly paid share that the member holds; and
 - (c) dividends payable on every partly-paid share that the member holds,for all amounts, whether presently due or not:
 - (d) payable in relation to the share; or

(e) that the member or the member's estate otherwise owes to the mutual.

(3) If an amount secured by a lien in Subrule (2) is presently due, the mutual may give the holder of the share a sale notice:

(a) setting out:

(i) how much is due; and

(ii) when the member must pay the amount due; and

(b) stating that, if the member does not pay this amount by that date, the mutual may sell the share.

The date for payment must be at least 14 days after the date on which the mutual gives the member the sale notice. In the absence of any manifest error, the sale notice is conclusive evidence of the amount that the member must pay the mutual as at the date the mutual issues the sale notice.

(4) If a member does not pay the amount due by the date stated in the sale notice under Subrule (3), the mutual may sell the shares on the terms and in the manner that the board determines. The mutual may:

(a) execute a share transfer to give effect to a sale of the shares; and

(b) register the transferee as the holder of the shares.

The transferee's title is not affected by any irregularity or invalidity in connection with the sale of the shares. The transferee is not required to see the application of the purchase consideration.

(5) A member whose shares have been sold remains liable to pay the mutual all amounts that the member or the member's estate owes to the mutual, whether or not presently due, less any consideration that the mutual receives on sale of the shares.

Division 7. — Dividends

7.

Corporations Act Commentary

The *Corporations Act* states that dividends may be paid only out of profits: see s 254T.

7.1 Payment of Dividends

- (1) The board may determine that the mutual pay a dividend on shares to which a right to participate in dividends attaches and may determine:
- (a) the amount of the dividend;
 - (b) the time for payment of the dividend; and
 - (c) the method of payment of the dividend.

The method of payment may include the payment of cash, the issue of securities and the transfer of assets. Where the mutual pays the dividend other than in cash, the board may fix the value of any securities issued or assets transferred.

- (2) If the terms of issue for a share require the general meeting's approval to any payment of a dividend on the share, the board's determination under Subrule (1) is effective only if the general meeting approves the dividend before the time for payment of the dividend arrives. The general meeting may not vary the board's determination.

Corporations Act Commentary

Section 254V(1) provides that the mutual only incurs a debt when the time fixed for payment of the dividend arrives. The decision to pay the dividend may be revoked at any time before then.

7.2 Differential Dividends

Subject to the terms on which shares in a class are issued, the board may determine dividends to different members in a class that differ:

- (a) in amount; and
- (b) in the method of payment (whether cash, securities, assets or any combination of them).

7.3 Interest on Dividends

Interest is not payable on a dividend.

7.4 MCI Dividends to be non-cumulative

Dividends in respect of MCIs issued by the mutual are non-cumulative. If, at any time that an MCI is held, the Dividends in relation to the MCI are suspended or reduced under Rule 7.5, the MCI Holder shall not have any right to receive that part of any expected Dividend which is not received due to the suspension or reduction, even where the suspension or reduction is subsequently ceased or varied.

Corporations Act Commentary

Under section 167AD(1)(b) and 167AF(b) 254V(1), a capital instrument will be an MCI only if the Constitution of the MCI mutual entity provides that Dividends in respect of the capital instrument are non-cumulative.

This means that, even where the MCI Issue Terms entitle the MCI Holder to a return of dividends at a specific rate, the mutual is permitted to suspend payment of Dividends, and the MCI Holder will have no right to receive any payment for Dividends in relation to the period of suspension.

7.5 MCI Dividends may be suspended or reduced

- (a) Notwithstanding the MCI Issue Terms of an MCI, the board may determine at any time, by resolution, that any right to receive Dividends in connection with that MCI is suspended or is reduced by a percentage or an amount determined by the board, if the board considers that the suspension or reduction is reasonably necessary for the mutual's compliance with binding prudential standards in all the circumstances that then apply.
- (b) MCI Issue Terms may provide that dividends in relation to the MCI may be suspended only if the Dividends in relation to all other MCIs are also suspended, or may provide that Dividends for the MCI may be suspended without the need for Dividends to be suspended in relation to any other MCI.
- (c) MCI Issue Terms may provide that dividends in relation to the MCI may be reduced only if the Dividends in relation to all other MCIs are also suspended or reduced by no less a percentage or amount, or may provide that Dividends for the MCI may be reduced without the need for Dividends to be suspended or reduced to any extent in relation to any other MCI.
- (d) While the right to receive Dividends in relation to any MCI is suspended or reduced under this Rule, the board or its delegate under Subrule 14.3 must consider, at least once per calendar month, whether circumstances have changed so that the suspension is able to be removed, or so that the reduction is able to be removed or adjusted in favour of the MCI Holder, and must retain a record of that determination.
- (e) An MCI Holder, or a person who was an MCI Holder at any time in the previous 12 months and in either case has been affected by a suspension or termination under this Rule, may upon providing reasonable notice and during business hours, inspect the records retained by the mutual under Sub-Rule (d).

Division 8. — Share Certificates

8.

Corporations Act Commentary

Mutual ADIs which transferred from the former State and Territory 'financial institutions scheme' do not have to issue certificates to members for member shares: see *Corporations Regulations* reg 12.08.08. However, where these mutual ADIs issue other classes of shares, certificates must be issued for those other classes of shares: see s 1096.

A member whose certificate is lost or destroyed may apply to the mutual ADI for a new certificate.

The mutual ADI must issue a new certificate although it may require the member to do one or more of the following:

advertise the loss or destruction of the certificate; and

provide the mutual ADI with an indemnity: see s 1089.

8.1 Share Certificates

- (1) This Rule does not apply in relation to member shares.
- (2) A member may require the mutual to issue to the member without charge 1 certificate for each class of shares in the mutual that the member holds.

Division 9. — Transfer of Shares

9.

9.1 Form of Share Transfer

A member wishing to transfer the member's share must use a share transfer that complies with the following requirements:

- (a) the share transfer relates to 1 class of shares only;
- (b) the share transfer is in writing; and
- (c) the share transfer is:
 - (i) in a form that the board approves; or
 - (ii) in any other usual or common form

Note: Subrule 9.3(1) prevents the mutual registering share transfers in some situations, even though the share transfer complies with the requirements set out in this Rule.

9.2 Ownership of Share Transfer

On receiving a share transfer (or a document that appears to be a share transfer), the mutual becomes the owner of the share transfer and has a right to exclusive possession of the share transfer.

9.3 Registration of Share Transfer

- (1) The mutual must not register a share transfer if:
 - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
 - (b) the share transfer is not in the form set out in Rule 9.1: or
 - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The mutual may refuse to register a share transfer unless:
 - (a) the shares are fully-paid;
 - (b) the mutual does not have a lien on the shares;
 - (c) the transferor has executed the share transfer;
 - (d) the transferee has executed the share transfer;
 - (e) a certificate for the shares accompanies the share transfer;
 - (f) the board has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and
 - (g) the board has all information that it reasonably requires to establish that the transferee agrees to be a member of the mutual.
- (3) The transferor of shares remains the holder of those shares until the mutual enters the transferee's name as holder of those shares in the Register of Members.

9.4 Powers of Attorney

- (1) The mutual may assume that a power of attorney authorising the attorney to transfer some or all of the member's shares that a member appears to have granted:
 - (a) is a valid and effective grant of the power it appears to grant; and
 - (b) continues in full force and effect.
- (2) The mutual may rely on the power of attorney until it receives a notice informing it that:
 - (a) the power of attorney has been revoked; or
 - (b) the member has died.

9.5 Suspension of Registration

The board may suspend the registration of share transfers at the times and for the periods it determines. The periods of suspension must not exceed 30 days in any 1 calendar year.

9.6 Transferability of MCIs

MCI Issue Terms may provide that the MCI is not transferable or that the MCI is transferable by the MCI Holder, with or without conditions.

9.7 General conditions on transferability of MCIs

Where MCI Issue Terms permit an MCI to be transferred, each of the following conditions apply unless the terms of issue of the MCI specifically excludes these conditions, or unless the board has specifically approved in writing, a transfer which is contrary to such a condition. The board may grant such an approval on conditions.

- (a) The transferee must be a 'wholesale client' for the purposes of the *Corporations Act*.
- (b) The transferee must be an Australian resident.
- (c) The transferee must not be a United States person or a United States owned foreign entity as defined in the *Foreign Account Tax Compliance Act* of the United States of America.
- (d) The transferee must not have any direct or indirect shareholding by any foreign government.

9.8 Form of MCI Transfer

An MCI Holder wishing to transfer an MCI they hold must use a share transfer that complies with the following requirements:

- (a) the share transfer relates to 1 MCI only;
- (b) the share transfer is:
 - (i) in a form that the board approves; or
 - (ii) in any other usual or common form

Note: Subrule 9.3(1) prevents the mutual registering share transfers in some situations, even though the share transfer complies with the requirements set out in this Rule.

9.9 Ownership of MCI Transfer

On receiving a share transfer (or a document that appears to be a share transfer), the mutual becomes the owner of the share transfer and has a right to exclusive possession of the share transfer.

9.10 Registration of MCI Transfer

- (1) The mutual must not register a transfer of an MCI if:
 - (a) the MCI Issue Terms prohibit the transfer of the shares to the transferee;
 - (b) the share transfer is not in the form set out in Rule 9.8;
 - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped;
 - (d) the board has approved the transfer under Subrule 9.7 subject to conditions, and the board is not satisfied that the conditions have been complied with; or
 - (e) the board believes on reasonable grounds that registration of the transfer would cause or contribute to an unacceptable risk of the mutual failing to comply with Prudential Standards.
- (2) The mutual may refuse to register a transfer of an MCI unless:
 - (a) the transferor has executed the share transfer;
 - (b) the transferee has executed the share transfer;
 - (c) a certificate for the shares accompanies the share transfer;
 - (d) the board has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and
 - (e) the board has all information that it reasonably requires to establish that the transferee complies with the conditions in Rule 9.10 and any conditions in the terms on which that MCI was issued.
- (3) The transferor of an MCI remains the MCI Holder until the mutual enters the transferee's name as holder of those shares in the Register of Members.

9.11 Third party rights

Whether or not it has notice of the rights or interests concerned, the mutual is not bound to recognise:

- (a) any equitable, contingent, future or partial claim to, or interest in, any MCI or purported unit of an MCI; or
- (b) any other right in respect of an MCI,

except an absolute right of ownership of the MCI Holder or as otherwise provided by this Constitution or by law.

Division 10. — Transmission of Shares

10.

10.1 Transmissions and the Common Bond

The mutual may register a person as holder of a member's shares under this Division even though the person is not eligible to be a member under the common bond.

10.2 Transmission of Shares on Death

- (1) On the death of a member, the mutual may recognise either the personal representative of the deceased member or another person who appears to the board to be entitled to the deceased member's estate as being entitled to the deceased member's interest in the shares.
- (2) If the personal representative gives the board the information it reasonably requires to establish an entitlement to be registered as holder of the member's shares, the personal representative may elect to:
 - (a) be registered as the holder of the shares; or
 - (b) apply to terminate the membership.

10.3 Transmission of Shares on Bankruptcy

Corporations Act Commentary

The *Corporations Act* sets out the rights of the trustee of the bankrupt's estate in relation to shares held by the bankrupt member, whether or not the trustee has become registered as holder of the shares.

The trustee has the same rights as to dividend, transfer of shares and sale of share as the bankrupt member had. Furthermore, the Constitution cannot override the trustee's rights: see s 1072C.

If the trustee of a bankrupt member's estate gives the board the information it reasonably requires to establish the trustee's entitlement to be registered as holder of the member's shares, the trustee may require the mutual to register the trustee as holder of the member's shares.

10.4 Transmission of Shares on Mental Incapacity

If a person entitled to shares because of a member's mental incapacity gives the board the information it reasonably requires to establish the person's entitlement to be registered as a holder of the member's shares:

- (a) the person may require the mutual to register the person as holder of the member's shares; and
- (b) whether or not registered as the holder of the shares, the person has the same rights, obligations and restrictions as the member.

Division 11. — Holding Members' Meetings

11.

Corporations Act Commentary

Holding a members' meeting

A members' meeting must be held at a reasonable time and place: see s 249R.

A members' meeting can be held using any technology (such as video conferencing), provided that it gives the members as a whole a reasonable opportunity to participate in the meeting: see s 249S.

Notice of members' meeting

At least 21 days notice must be given of a members' meeting. A meeting can be called on shorter notice with the consent of the requisite number of members, but not to remove a director or auditor: see 249H.

Written notice must be given individually to each member and director.

In the case of joint members, notice is given to the first named member in the register of members. See Subrule 3.3(3).

Notice must be given personally, by post, and in certain cases by fax or by electronic means (section 249J). See Subrule 1.5(4) as to service by post, fax or electronic means.

The auditor must also receive the notice convening a general meeting and other communication members are entitled to receive: see s 249K.

Content of notice

A notice convening a members' meeting must

- set out the place, date and time of the meeting and the technology to be used to conduct the meeting if it is to be held in 2 or more places;
- state the general nature of the meeting's business;
- state the terms of any special resolution and the fact that it is proposed as a special resolution;
- in relation to proxies:
 - that the member has a right to appoint a proxy;
 - whether or not the proxy needs to be a member of the mutual; and
 - that a member entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise: see s 249L.

Auditor's right to attend

The Auditor has a right to attend any general meeting and to speak: see s 249V.

Members' right to give notice of a resolution

Members with at least 5% of the votes that may be cast at a general meeting or at least 100 members may give a company notice of a resolution that they propose to move at a general meeting: see s 249N.

This resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given: see s 249O.

Members' request for statement to be distributed

A company must distribute a statement about a resolution, or other matter to be considered at a general meeting, as requested by a certain number of members: see s 249P.

The AGM

A company must hold an AGM within 5 months after the end of its financial year: see s 250N.

The business of an AGM may include the following, even if not referred to in the notice of meeting:

- consideration of the annual financial report, directors' report and auditor's report;
- election of directors;
- appointment of auditor;
- fixing of the auditor's remuneration: see s 250R.

The chair of the AGM must:

- allow members a reasonable opportunity to ask questions about, and to comment on, the management of the mutual: see s 250S; and
- allow members a reasonable opportunity to ask the auditor or the auditor's representative, when present, questions relevant to the conduct of the audit and the preparation and content of the auditor's report: see 250T.

11.1 Calling Meetings of Members

Corporations Act Commentary

Members' right to call a general meeting

A general meeting must be held if 100 members, or members with at least 5% of the votes ask for it. The board has to call a general meeting within 21 days after the request and the meeting itself must be held within 2 months: see ss 249D and 249F. In any case, members who hold at least 5% of the votes can call and arrange to hold a meeting themselves: see s 249F.

The board may call a members' meeting.

11.2 Adjourning Meetings of Members

- (1) The chair of a members' meeting at which a quorum is present:
 - (a) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
 - (b) must adjourn the meeting if directed by ordinary resolution.
- (2) The mutual must give notice of an adjourned members' meeting if the adjournment is for 1 month or more.
- (3) The only business that an adjourned members' meeting may deal with is business unfinished at the members' meeting that was adjourned.

11.3 Proceedings at Members' Meetings

- (1) The quorum for a members' meeting is:
 - (a) 25 members present in person; or
 - (b) if less than 50 members are eligible to attend and vote at a members' meeting — 50% of the members eligible to attend and vote at the members' meeting,

Note: Paragraph (b) may apply in relation to meetings of classes of members, where the only members eligible to attend the meeting are members of the relevant class.

- (2) If a quorum is not present within 30 minutes after the time for the members' meeting set out in the notice of meeting, the meeting is adjourned to the date, time and place the board specifies. If the board does not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified — the same day in the next week;
 - (b) if the time is not specified — the same time; and
 - (c) if the place is not specified — the same place.

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

- (3) If, after the commencement of a members' meeting at which a quorum is present, the attention of the meeting is drawn to the absence of a quorum and a quorum is not present within 10 minutes:
 - (a) the meeting is adjourned to the same time and place 7 days after the meeting, or to the date, time and place the board specifies;
 - (b) if no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (4) The chair of members' meetings is:
 - (a) the chair of meetings of the board; or
 - (b) if the chair of meetings of the board is not present or declines to act for the meeting (or part of it) — the deputy chair of meetings of the board.

If the chair or deputy chair of meetings of the board is not available within 30 minutes of the appointed start of the meeting, or declines to act, the members must elect an individual present to chair the meeting.

- (5) The Standing Orders in Appendix 2 apply to the conduct of debate at members' meetings.

11.4 MCI Holders and Meetings of Members

- (1) An MCI Holder (in that capacity) has no right to attend or be given notice of a members' meeting unless the MCI Issue Terms give the MCI Holder a right to be notified or to attend. Failure for any reason to notify an MCI Holder of a members' meeting gives the MCI Holder no rights against the mutual and has no impact on the validity of the members' meeting. An MCI Holder has no right to vote at a members' meeting. An MCI Holder that has a right to attend a members' meeting has no right to be heard at such a members' meeting, except that where the issue being considered by the members' meeting relates to a change in the rights of the MCI Holder, the MCI Holder may be heard in accordance with the Standing Orders in Appendix 2 applicable to members at the meeting.

Division 12. — Voting at Members' Meetings

12.

12.1 Voting

- (1) A resolution put to the vote at a members' meeting must be decided on a show of hands unless a poll is demanded.
- (1A) If the mutual has an electronic voting system which permits members to vote at or prior to a meeting by electronic means on a show of hands or a poll, a vote cast by a member by electronic means is taken to have been cast on the show of hands or poll and is to be counted accordingly.
- (1B) If a member has voted on a resolution by electronic means prior to a meeting, the member may not cast another vote on the resolution at the meeting.
- (2) Before a members' meeting votes on a resolution, the chair must inform the meeting:
 - (a) if any proxy votes have been received and, if so:
 - (i) how many proxy documents the mutual has received that validly appoint a person present at the meeting as proxy;
 - (ii) how many of these proxy documents direct the proxies how to vote on the resolution; and
 - (iii) how the proxies are directed to vote on the resolution; and.
 - (b) if any votes have been received by electronic means prior to the meeting pursuant to Rule 12.1(2) and, if so:
 - (i) how many valid votes by electronic means the mutual has received prior to the meeting; and
 - (ii) how the votes received by electronic means prior to the meeting have voted on the resolution.
- (3) The members' meeting passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (4) The chair does not have a casting vote in addition to ~~his or her~~ deliberative vote.

12.2 Voting on a Show of Hands

On a show of hands, the chair's declaration is conclusive evidence of the result, so long as the declaration reflects the show of hands. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution. The minutes only need to record that the resolution was passed or not passed.

12.3 Voting on a Poll

Corporations Act Commentary

Section 250L allows the following to demand a poll:

- 5 members entitled to vote on the resolution;
- members with at least 5% of the votes to be cast on the resolution; or
- the chair.

A proxy may join a demand for a poll: see s 249Y(1)

Section 250K states that a poll may be demanded on any question and that the demand may be withdrawn.

- (1) A poll cannot be demanded on any resolution concerning the election of a person to chair the members' meeting.
- (2) A poll on the question of an adjournment must be taken immediately. The chair may direct when and the manner in which any other poll must be taken.
- (3) The members' meeting may conduct other business even though a poll is demanded on a resolution.

12.4 Body Corporate Representatives

Corporations Act Commentary

Section 250D says that a body corporate member may appoint a representative to exercise the member's powers at a general meeting. The appointment can be a standing appointment. The appointment can set out restrictions on the representative's powers. A member can appoint more than 1 representative but only 1 can exercise the member's powers at any one time.

- (1) A member that appoints a body corporate representative must give the mutual:
 - (a) if the member appointed the representative by board resolution — a certified copy of the board resolution appointing the representative; and
 - (b) otherwise — a copy of the instrument appointing the representative, as soon as practicable after appointing the representative, and in any event before any member's meeting at which the representative may exercise the member's rights.
- (2) In addition to the rights and powers a member's representative may exercise under the *Corporations Act*, the representative may exercise the member's right to vote in a ballot to appoint directors by election.

12.5 Proxies

Corporations Act Commentary

Sections 249X to 250C set out members' powers to appoint proxies and the rights and obligations of proxies.

- (1) The board may determine the form of proxy document from time-to-time.
- (2) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
 - (a) the member's name; and
 - (b) the proxy's name or the name of the office that the proxy holds.
- (3) A proxy does not have a right to vote on a show of hands.
- (4) [Not used]
- (5) Unless the mutual receives written notice of the matter before the meeting at which a proxy votes starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
 - (a) the appointing member dies; or
 - (b) the member is mentally incapacitated;

- (c) the member revokes the proxy's appointment;
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the share in respect of which the member or a third party appointed the proxy.

12.6 Objections

An objection to the qualification of a voter:

- (a) may only be made at the members' meeting or adjourned members' meeting at which the vote objected to is cast; and
- (b) must be ruled upon by the chair whose decision is final.

12.7 MCI Holders and voting

- (1) An MCI Holder has no right to vote at any members' meeting (neither on a show of hands nor on a poll) and has no right to appoint a proxy, except to the extent that the MCI Holder is also a member by virtue of holding a member share, and exercises the rights of a member in that capacity.

Division 13. — Directors — Appointment & Vacation of Office

13.

13.1 Number of Directors

The number of directors is 7, or such other number as determined by the board, subject to a maximum of 10.

Corporations Act Commentary

Section 201A(2) provides that companies must have at least 3 directors (not counting alternate directors) and that at least 2 must ordinarily reside in Australia.

13.2 Eligibility to be a Director

- (1) An individual is eligible to be a director if the person:
 - (a) is a member;
 - (b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; and
 - (c) is not disqualified by law from being or acting as a director.
- (2) A person is not eligible to be appointed director under Rule 13.3 if the Nominations Committee has determined that the person does not have the appropriate fitness and propriety to be and act as a director, by reference to the board's Fit and Proper Policy, or would not contribute appropriately to any skills and experience criteria notified under Rule 13.10 in the case of a non-incumbent.
- (3) A person is not eligible to be appointed director under Rule 13.3 if at the commencement of the AGM at which they would be appointed:
 - (a) from 2014 to 2017, the person has cumulatively had 15 years (rounding to the nearest year) of service as a director of the mutual; ~~and~~
 - (b) from ~~and after 2018~~ to 2025, the person has cumulatively had 12 years of service (rounding to the nearest year) as a director of the mutual; ~~and-~~
 - (c) from and after 2025, subject to Rule 13.2(6), the person has cumulatively had 9 years of service (rounding to the nearest year) as a director of the mutual.
- (4) Subject to Rule 13.2(5), a person is not eligible to be appointed as a director under Rule 13.4 or to continue as a director appointed under Rule 13.4:
 - (a) from the 2014 AGM to the commencement of the 2018 AGM, if the person has at the relevant time cumulatively had 15 years of office as a director of the mutual; ~~and~~
 - (b) at and after the commencement of the 2018 AGM to the commencement of the 2025 AGM, if the person has at the relevant time cumulatively had 12 years of office as a director of the mutual; ~~and-~~
 - (c) from and after 2025, subject to Rule 13.2(6), the person has cumulatively had 9 years of service (rounding to the nearest year) as a director of the mutual.
- (5) Rule 13.2(4) does not apply to a person during any period that the person is an executive officer of the mutual who has been appointed as a director under Rule 13.4.

(6) Rule 13.2(3) and Rule 13.2(4) do not apply to a person who:

(a) holds the office of chair of the board under Rule 15.3 and has held such office for no more than 12 years (or a longer period of up to 15 years as determined by the board by unanimous resolution if it considers that exceptional circumstances require it to do so); or

(b) is the sole person currently the subject of a resolution carried unanimously by the board as being exempt from Rule 13.2(3) and Rule 13.2(4) on account of their particular skills and experience.

Corporations Act Commentary

Section 201B(1) provides that only individuals (not bodies corporate) who are at least 18 may be directors.

Section 201B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a director if the appointment is made with ASIC's permission under s 206F or the Court's leave under s 206G.

13.3 Appointment by Members — Election

The members may appoint a person to be a director by election held under the provisions of Appendix 3.

13.4 Appointment by Board — Casual Vacancies

(1) The board may appoint ~~directors, one of whom may be an~~ executive officer as a director, provided always that the majority shall be appointed in accordance with Rule 13.3.

(2) The board may also appoint a person to be a director:

(a) if a director's office becomes vacant other than because the director's term of office has ended;

(b) if, for any other reason, the number of directors is fewer than the number determined under Rule 13.1.

(3) The board may only appoint a person who is eligible to be a director under Rule 13.2(1).

~~(4) The board may not exercise its power of appointment under Rule 13.4 unless:~~

~~(a) there are already two serving Australian Defence Force personnel in office as directors;~~

~~(b) the person appointed is a serving Australian Defence Force member; or~~

~~(a)(c) the board decides unanimously that exceptional circumstances exist to require an appointment of another specific person.~~

~~(4) Subject to Rule 13.2(4), the term of office for a director appointed in accordance with Subrule 13.4(1) shall be determined by the board.~~

(5) The term of office for a director appointed to fill a vacancy in Subrule 13.4(2)(a) ends at the end of the term of office of the director whose office has become vacant.

(6) The term of office for a director appointed to fill a vacancy in Subrule 13.4(2)(b) ends at the end of the next AGM after the director's appointment.

13.5 Term of Office

(1) This Rule 13.5 only applies to directors who are elected by the members.

(2) Subject to the *Corporations Act* and the rotation provisions in this Rule, a director's term of office:

- (a) starts at the end of the AGM at which the director's election is announced; and
 - (b) ends at the end of the third AGM after the AGM at which the director's election is announced.
- (3) If the number of directors that members appoint is more than a third of the number determined under Rule 13.1:
- (a) the term of office for the third of the number determined under Rule 13.1 that receives the most votes at the election, ends at the end of the third AGM after the AGM at which the directors' election is announced; and
 - (b) the term of office for the remainder ends at the end of earlier AGMs where less than a third of the number of directors determined under Rule 13.1 are due to retire at those earlier AGMs.

Directors with fewer votes retire at earlier AGMs than those with more votes.

- (4) For purposes of Subrule (3):
- (a) if the number of directors elected by the members is not divisible by 3 — round fractions up to the nearest whole number in determining how many directors there are in a third of the number of directors elected by members; and
 - (b) if 2 or more directors have the same number of votes — the order of retirement amongst them is determined by lot.

Commentary

Rule 13.5(3) seeks a future re-alignment to as-close-as possible one-third of directors facing re-election each year in circumstances where more than one-third were elected at the same time.

13.6 Automatic Vacation of Office

The office of a director automatically becomes vacant if the director:

- (a) dies;
- (b) ceases to be eligible to be a director under Rule 13.2(1);
- (c) is absent from 3 consecutive ordinary meetings of the board without leave; or
- (d) is 3 months in arrears in relation to money due to the mutual and has failed to make arrangements for payment satisfactory to the mutual.

Neither the board nor the general meeting may waive the operation of this Rule.

Corporations Act Commentary

Section 203D provides for that the general meeting of a company may remove a director by ordinary resolution.

13.7 Resignation

- (1) A director may resign by giving the mutual notice of the director's resignation.
- (2) The director's office becomes vacant:
 - (a) if the notice of resignation specifies a date of resignation — on the date of resignation; or
 - (b) otherwise — on the date the mutual receives the notice of resignation.

13.8 Alternate Directors

(1) In this Rule, unless the context requires otherwise:

alternate means a person that a director appoints as ~~his or her~~an alternate director under Subrule (2), but only in the person's capacity as the alternate director.

appointor means the director who appoints an alternate under Subrule (2)

(2) A person is eligible to be an alternate for a director if the person:

- (a) is eligible to be a director under Rule 13.2(1);
- (b) is not a director; and
- (c) is not an alternate for another director.

(3) A director (but not an alternate) may give the mutual a notice appointing a person eligible under Subrule (2) to be ~~his or her~~an alternate. The notice must set out:

- (a) the name of the person to be appointed as alternate;
- (b) the term of the alternate's appointment (or that the appointment is for an indefinite term);
- (c) whether or not the appointor requires the mutual to give notices of board meetings to the alternate;
- (d) whether or not the alternate can sign circulating resolutions instead of the appointor.

The notice of appointment only takes effect if the board approves the alternate's appointment.

(4) The alternate is not the appointor's agent, but a director of the mutual. The alternate has all the duties, powers and rights of the appointor as a director. Except to the extent that this Rule provides otherwise, all references to directors in this Constitution include references to the alternate.

(5) The mutual only has to give notice of board meetings to the alternate if the appointor has given the mutual a notice requiring it to do so.

Note: See Rule 15.1 in relation to notice of board meetings.

(6) The alternate may only be present at meetings of directors:

- (a) at which the appointor is absent; or
- (b) at the invitation of the board.

(7) The alternate:

- (a) is only entitled to vote at meetings of directors when the appointor is absent;
- (b) may be present and may vote on a matter even though the appointor has a material personal interest in the matter; and
- (c) does not breach ~~his or her~~the alternate's duties to the mutual by reason of any matter considered or voted on at a meeting at which the alternate was absent because the appointor was present.

Note: See Rule 15.2 in relation to quorum at a board meeting. See Rule 15.4 in relation to voting on resolutions at board meetings. See Rule 16.2 in relation to directors not being present or voting on matters in relation to which they have a material personal interest.

(8) The reference to 'all directors' in Rule 15.5 refers to:

- (a) if the appointor notifies the mutual that the alternate can sign circulating resolutions instead of the appointor — the alternate and other directors but not the appointor;
 - (b) otherwise — the appointor and other directors but not the alternate.
- (9) The alternate's office automatically becomes vacant if:
- (a) the appointor revokes the alternate's appointment;
 - (b) the board resolves to terminate the appointment after giving 7 days' notice to the appointor of intention to remove the alternate; or
 - (c) the appointor's office as a director becomes vacant (except where the appointor's term as a director ends at the end of an AGM under Rule 13.5 and the members re-elect the appointor as a director at that AGM).

The alternate's office may also become vacant in the circumstances set out in Rule 13.6 and Rule 13.7.

13.9 Nominations Committee

The board must establish a Nominations Committee in accordance with Appendix 4.

13.10 Board skills and experience criteria

Having regard to the mutual's policies regarding governance and board operations, the board may from time to time notify the Nominations Committee of any skills, experience, commercial experience or competency which the board considers would be beneficial for directors to have, in order to maintain or enhance the ability of the board to provide appropriate management of and guidance for the mutual.

Division 14. — Directors' Powers

14.

14.1 Powers and Duties of the Board

The board:

- (a) manages the mutual's business; and
- (b) may exercise all the powers of the mutual except any powers that the *Corporations Act* or this Constitution expressly allocates to the general meeting.

14.2 Negotiable Instruments

The board may authorise a person or persons to sign, draw, accept, endorse or otherwise execute negotiable instruments for the mutual. The board may authorise the application of signatures to negotiable instruments by machine or other facsimile method.

14.3 Delegation

- (1) The board may delegate any of its powers to any committee or any other person or persons, subject to Rule 3.2 . The board may permit the delegate to sub-delegate any powers delegated to them.

Corporations Act Commentary

The delegate must exercise the powers delegated in accordance with any directions of the board. A power so exercised is taken to have been exercised by the board: see s 198D.

- (2) The board must establish policies for the guidance of delegates in the exercise of any powers so delegated.
- (3) Without limiting its powers, the board may appoint a person to be the mutual's attorney for purposes, with powers (being the board's powers), for the period and on terms the board determines. In particular, the power of attorney may:
 - (a) include terms protecting persons dealing with the attorney, as the board determines; and
 - (b) authorise the attorney to delegate any or all of the attorney's powers.

Division 15. — Directors' Meetings

Corporations Act Commentary

Section 248D says that a meeting may be called and held using any technology consented to by all directors. The consent may be a standing one. A director can withdraw consent within a reasonable period before the meeting.

15.

15.1 Calling and Conduct of Board Meetings

- (1) A director or the secretary (upon the authority of a director) may call a board meeting by giving reasonable notice to every other director.
- (2) The board may meet, adjourn and otherwise regulate its meetings as it thinks fit.

15.2 Quorum of Board

- (1) The quorum for a board meeting is 4 directors at any time that the board consists of 7 or fewer directors but increases to 5 directors if the board consists of 8 or more directors. ~~and t~~he quorum must be present at all times during the meeting. For the avoidance of doubt, a director participating remotely will be counted as present for the purpose of calculating compliance with the quorum.
- (2) If, at any time, the number of directors is less than the quorum:
 - (a) the board may meet only for the purpose of filling any casual vacancies or for calling a general meeting of members; and
 - (b) the board may conduct business by circulating resolution under Rule 15.5.

15.3 Chair of Board

- (1) The board may appoint a director to chair its meetings. The board may determine the period for which the director is to be the chair. The board may remove the chair from the position of chair at any time.
- (2) The board must elect a director present to chair a meeting (or part of it) if:
 - (a) a director has not already been appointed to chair the meeting; or
 - (b) a previously appointed chair is not available, or declines to act, for the meeting (or part of it).

15.4 Passing of Directors' Resolutions

- (1) A resolution of the board must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chair has a casting vote in addition to ~~his or her~~ deliberative vote.

15.5 Circulating Resolutions

- (1) The board may pass a resolution without a board meeting if the procedure in this clause 15.5 is followed.
- (2) A secretary may produce a document (form of resolution) which:
 - (a) may be in purely electronic form (such as an email);
 - (b) states that it is a proposed circulating resolution of the mutual;

- (c) sets out the proposed resolution; and
- (d) includes a statement that any director opposed to the passing of the proposed resolution may prevent the resolution from being passed by contacting the secretary to express an objection before the relevant 66.75% threshold mentioned in subclause (3) is achieved.

The secretary must provide a copy of the form of resolution to each director using a method for contact nominated by each director for the purpose of this clause 15.5, and request that directors entitled to vote on the resolution and agreeing with the proposed resolution will sign the form of resolution and return a copy (including by facsimile or a scanned and emailed copy), or otherwise indicate that they are in favour of the proposed resolution set out in the form of resolution (such as by a reply email indicating that the proposed resolution is supported).

- (3) The proposed resolution is passed at the time that the secretary has received communications from directors comprising 66.75% of the directors entitled to vote on the resolution, indicating that such directors are in favour of the proposed resolution. However, the proposed resolution will automatically lapse and cannot be passed if, before that 66.75% threshold is passed, the secretary receives a communication from any director entitled to vote on the resolution which indicates that the director objects to the proposed resolution. (To avoid doubt, the validity of a resolution which passes the 66.75% threshold before any objection is received is not affected by any subsequent objection that is received after the resolution is passed.)

15.6 Committees of Directors

- (1) The board may establish one or more committees consisting of such number of directors as the board thinks fit.
- (2) The members of a committee may appoint one of their number as chair of their meetings.
- (3) Subject to any restrictions that the board imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (4) Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.
- (5) The chair does not have a casting vote in addition to ~~his or her~~ deliberative vote.

Division 16. — Conflicts of Interest

16.

Corporations Act Commentary

Part 2D.1 and Chapter 2E deal with conflicts of interest and financial benefits to related parties.

16.1 Director Not in Breach if Acts in Matters Relating to Director's Interests

- (1) This Rule applies if:
 - (a) a director has an interest or duty in relation to a matter that is not a material personal interest; or
 - (b) if a director with a material personal interest in relation to the mutual's affairs:
 - (i) complies with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the mutuals affairs before acting in a matter that relates to the interest; and
 - (ii) may be present and vote on the matter under the *Corporations Act*.
- (2) The director is not in breach of ~~his or her~~ the director's duties to the mutual merely because ~~he or she~~ the director acts in matters that relate to the director's interest.
- (3) The director may vote on matters that relate to the director's interest.
- (4) In relation to any transactions that relate to the director's interest:
 - (a) the transactions may proceed;
 - (b) the mutual cannot avoid the transactions merely because of the director's interest; and
 - (c) the director may retain benefits under the transactions despite the director's interest.

16.2 Director Not in Breach if Does Not Act in Matters Relating to Director's Interests

- (1) This Rule applies if a director with a material personal interest in relation to a matter:
 - (a) complies with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the mutuals affairs; but
 - (b) must not be present and vote on the matter under the *Corporations Act*.

Corporations Act Commentary

Section 195 provides that a director of a company who has a material personal interest in the matter that a board meeting is considering must not:

- be present while the matter is being considered at the board meeting; or
- vote on the matter,

unless:

- the other directors approve the director being present: see s 195(2);
- ASIC approves the director being present: see s 195(3); or
- the interest does not have to be disclosed: see s 191.

- (2) The director is not in breach of duty to the mutual merely because ~~he or she~~ the director does not act in relation to the matter.
- (3) The board may vote on matters that relate to the director's interest in the director's absence.
- (4) In relation to any transactions that relate to the director's interest:
 - (a) the transactions may proceed;
 - (b) the mutual cannot avoid the transactions merely because of the director's interest; and
 - (c) the director may retain benefits under the transactions despite the director's interest.

16.3 Execution of Instruments

A director may participate in the execution of an instrument for the mutual, regardless of any interest or duty that the director may have:

- (a) whether or not the director has complied with the requirements of the *Corporations Act* in relation to disclosure of the nature and extent of the interest and its relation to the mutuals affairs; and
- (b) whether or not the director may be present and vote in relation to the execution of the instrument under the *Corporations Act*.

Division 17. — Remuneration, Indemnity and Insurance

17.

17.1 Remuneration of Directors

- (1) Subject to Rule 17.1(4), in any financial year for the mutual, the directors' remuneration may not exceed the aggregate amount that the general meeting determines for that year.
- (2) The board may determine the allocation of the aggregate amount of remuneration (including an aggregate amount determined under Rule 17.1(4)(a)) among the directors. If the board does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the directors.
- (3) The directors' remuneration accrues daily from the day that the general meeting approves the remuneration to the day that the general meeting next determines the directors' remuneration.
- (4) If the general meeting does not determine any amount for directors' remuneration for any financial year for the mutual, then the directors' remuneration for that financial year:
 - (a) will extend to, but may not exceed, the aggregate amount for remuneration of directors determined at the most recent general meeting that determined such amount, and
 - (b) accrues daily from the anniversary of that most recent general meeting to the day that the general meeting next determines the directors' remuneration, or (if no such determination is made for the following financial year for the mutual), to the next anniversary of that most recent general meeting that determined such amount.

17.2 Travelling Expenses and Insurance

In addition to any remuneration to which a director may be entitled, the mutual may also pay:

- (a) the director's travelling and other expenses that they properly incur:
 - (i) in attending board meetings or any meetings of committees of directors; and
 - (ii) in attending any members' meetings; and
 - (iii) otherwise in connection with the mutual's business; and
- (b) subject to the *Corporations Act*, insurance premiums for a contract that insures the director against liabilities that the director incurs as an officer of the mutual.

17.3 Indemnities for Officers and Former Officers

Corporations Act Commentary

Section 199A restricts the mutual from giving an indemnity to persons who are, or have been, officers or auditors against certain liabilities they incur while acting in that position. Those liabilities include:

- liability incurred to the mutual or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 961M, s 1317H, s 1317HA or s 1317HB;
- liabilities arising out of conduct involving a lack of good faith;
- liability for costs or expenses that the officer incurs:
 - in defending proceedings where the person is found liable (on the grounds described above);
 - in defending criminal proceedings where the person is found guilty;
 - in defending proceedings brought by ASIC or a liquidator for a court order if the grounds for the court order are established;

– in connection with proceedings for relief under the *Corporations Act* where the court denies relief.
Section 199B restricts the mutual from providing insurance for liability arising out of conduct involving a wilful breach of duty or a contravention of their duty not to misuse their position or information.

- (1) In this Rule indemnified person means an officer or agent, or former officer or agent, of the mutual.
- (2) To the extent that the *Corporations Act* permits:
 - (a) the mutual must indemnify an indemnified person against any liability that the indemnified person incurs in conducting the mutual's business or exercising the mutual's powers as an officer or agent of the mutual; and
 - (b) the mutual may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an indemnified person or any other person.
- (3) The indemnity in paragraph (2)(a) applies in relation to an indemnified person for all incidents occurring during the period that person is an officer or agent of the mutual, even though a claim is made against the indemnified person after they have ceased to be an officer or agent of the mutual.

Division 18. — Administration

18.

18.1 Secretary

Corporations Act Commentary

Under s 204A(2), a company must have at least 1 secretary and at least 1 secretary must reside in Australia.

Section 204B(1) provides that only individuals (not bodies corporate) who are at least 18 may be secretaries.

Section 204B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a secretary if the appointment is made with ASIC's permission under s 206F or the Court's leave under s 206G.

Subject to Rule 18.2, the board may determine a secretary's terms of appointment, powers, duties and remuneration. At any time, the board may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

18.2 Resignation of Secretary

- (1) A secretary may resign by giving the mutual notice of the secretary's resignation.
- (2) The secretary's office becomes vacant:
 - (a) if the notice of resignation specifies a date of resignation — on the date of resignation; or
 - (b) otherwise — on the date the mutual receives the notice of resignation.

Appendix 1 – Terms of Issue for Shares

Division 1 — Member Shares

A1–1 Subscription price

The subscription price for a member share is \$10.00.

A1–2 Rights, Obligations and Restrictions Attaching to Member Shares

- (1) The following rights attach to each member share:
 - (a) the right to vote on the terms set out in clause A1–3;
 - (b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A1–5; and
 - (c) the right to redeem the member shares on the terms set out in clause A1–6.
- (2) The obligation to pay any unpaid subscription price on the terms set out in clause A1–7 attaches to each member share.
- (3) The restriction on transfer of member shares in clause A1–8 attaches to each member share.
- (4) The mutual may issue more member shares at any time. The issue of more member shares does not vary the rights attached to member shares that the mutual has already issued.

Note: For the holder of a member share's entitlement to receive financial accommodation from the mutual, see Rule 2.2 and Subrule 3.1(3).

A1–3 Voting Rights

- (1) Holders of member shares, other than minors, may participate and vote:
 - (a) at a members' meeting;
 - (b) at a meeting of the class of holders of member shares;
 - (c) in a ballot to appoint directors by election; and
 - (d) in a ballot under Appendix 5.
- (2) At a members' meeting or a meeting of the class of holders of member shares, whether on a poll or a show of hands:
 - (a) each holder of member shares has 1 vote regardless of the number of shares held;
 - (b) a member who is a minor has no vote; and
 - (c) despite Subrule (a) a representative of a body corporate member can vote both as a member and as a representative of the body corporate.

A1–4 Dividend Entitlements

No dividend is payable in respect of any member share.

A1–5 Distribution on Winding-Up

- (1) On a winding-up of the mutual the holder of a member share is entitled:
 - (a) to payment of the subscription price for the member share when the member subscribed for the member share; and
 - (b) if any assets remain after the payments in paragraph (a) — to any surplus assets of the mutual.
- (2) Each member share carries a right to participate in surplus assets equally with every other member share.
- (3) The mutual may offset against the amount payable under this clause:
 - (a) any amount unpaid on the member share; and
 - (b) any other amount payable by the member to the mutual.
- (4) The entitlements of holders of member shares to payment on winding-up are subject to any preferred entitlements to payment on winding-up that holders of any other class of shares may have.

A1–6 Redemption of Member Shares

- (1) The mutual may redeem a member share only if the following conditions are satisfied:
 - (a) either:
 - (i) the member has given the mutual notice requesting termination of the member's membership of the mutual under Rule 4.2;
 - (ii) the board has resolved to terminate the member's membership of the mutual under Rule 4.3; or
 - (iii) the board has determined that the member's deposit accounts with the mutual are dormant under Rule 4.4;
 - (b) the mutual can redeem the member share out of:
 - (i) the profits of the mutual; or
 - (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the mutual must pay the member an amount equal to the subscription price for the member share when the member subscribed for the member share less any amount unpaid on the member share.
- (3) On redemption, the member shares are cancelled.
- (4) This Rule does not affect the terms on which member shares may be cancelled under a reduction of capital or a share buy-back under *Corporations Act* Part 2J.1.

A1–7 [Not used]

A1–8 Transfer of Member Shares

- (1) Subject to Subclause (2), a member may not transfer their member share.
- (2) A trustee for an unincorporated association may transfer the member share that they hold as trustee for the unincorporated association to another person who is to act as trustee for the unincorporated association.

A1-9 to A1-20 [Not used]

Division 2 — MCIs

A1-21 Classes of MCIs and MCI Issue Terms

The board may resolve that MCIs may be issued in distinct classes. Where separate classes of MCI are issued, the rights of any class may not be cancelled or varied except through the process in paragraph A1-27. The board may in its discretion determine the MCI Issue Terms upon which any MCI is to be issued. To avoid doubt, the board may determine MCI Issue Terms which provide for Dividends and other rights which rank equally to or in preference to any other MCI that is on issue.

A1-22 Issue price

The issue price for each MCI is set by the board and set out in the MCI Issue Terms. There is no requirement that each MCI be issued at a common price.

A1-23 MCIs to be fully paid

An MCI can only be issued as a fully paid share in the capital of the mutual.

Corporations Act Commentary

Under s 167AF(1) an MCI can only be issued as a fully paid share of an MCI mutual entity.

A1-24 Voting rights

An MCI Holder shall have no right to vote at a general meeting of the mutual (except to the extent that the MCI Holder is also a member by virtue of holding a member share). An MCI Holder shall have the right to vote at a meeting of MCI Holders as to matters affecting the continuing existence of the mutual, and as to matters affecting rights of MCI Holders.

Where a poll is called at a meeting of MCI Holders, each MCI Holder shall have one vote for every whole \$1,000 of Issue Price of the MCIs they hold. For example, if an MCI Holder is the holder of an MCI with an Issue Price of \$500,000 and of an MCI with an Issue Price of \$300,500, that MCI Holder would be able to exercise 800 votes on a poll.

A1-25 Restriction of MCI rights to profits or surplus

- (1) An MCI does not allow the MCI Holder to participate in the surplus assets or profits of the mutual, except to the extent of payment of Dividends under Rule 7 and the payment to be made by the mutual upon redemption of the MCI under Rule 4.7. To avoid doubt, on any winding-up of the mutual, MCI Holders have an entitlement to be paid these amounts in preference to the rights of members under paragraph A1-5, subject to the MCI Issue Terms.

Corporations Act Commentary

Under s 167AF(c), the rights of an MCI Holder to participate in surplus and profits must be set out in the MCI mutual entity's constitution.

In accordance with paragraphs 20 and 21 of the Principles of Mutuality, the holder of an additional share can participate in the surplus and profits of the mutual only to the extent of payment for redemption of the additional share, and arrears of cumulative dividends. However, under the *Corporations Act*, MCI dividends must be non-cumulative.

A1–26 MCIs to be cancelled in certain circumstances

- (1) It is a condition of issue of each MCI that the MCI must be cancelled before anything occurs which would disentitle the mutual from being an 'MCI mutual entity' as described in the *Corporations Act*.

Corporations Act Commentary

Under s 167AG, all MCIs must be cancelled before an MCI mutual entity ceases to be an MCI mutual entity.

Events which could cause the mutual to cease to be an MCI mutual entity under the *Corporations Act* might include a demutualisation of the mutual under Appendix 5.

A1–27 Cancellation or variation of MCIs

- (1) The rights attached to any MCI may be varied or cancelled (whether or not the mutual is being wound up) only by:
- (a) special resolution of the mutual; and either
 - (b) where only one class of MCI has been issued:
 - (i) by special resolution passed at a separate meeting of the MCI Holders; or
 - (ii) with the written consent of at least 75 per cent by voting value of the MCI Holders; or
 - (c) where more than one class of MCI has been issued:
 - (i) by special resolutions passed at separate meetings of the MCI Holders in each class of MCI that would be affected; or
 - (ii) with the written consent of at least 75 per cent by voting value of the MCI Holders in each class of MCI that would be affected.
- (2) The provisions of this Constitution relating to general meetings will apply to every such separate meeting under paragraph A1-27(1) with such changes as are necessary so that:
- (a) shorter notice than is specified in this Constitution may be given if all of the MCI Holders entitled to attend a meeting consent in writing;
 - (b) the Standing Orders in Appendix 2 apply as though references to a member were references to an MCI Holder;
 - (c) MCI Holders will be regarded as present at the meeting for all purposes, including for purposes of quorum, if the MCI Holder in person, by proxy or power of attorney, or as representative are both able to hear the proceedings of the meeting and, at the times when they are entitled under the Standing Orders in Appendix 2 to be heard, are able to communicate information to the meeting (whether by voice or submission of communications in the form of text);
 - (d) for the purpose of paragraph A1-27(2)(c), an MCI Holder who announces their attendance at a meeting will, unless they give notice to the mutual that they were not able to do so within 15 minutes of the meeting being adjourned, be conclusively presumed to have been able to hear proceedings and communicate information;
 - (e) the necessary quorum is specified as one or more persons together holding or representing by proxy at least one-third of the voting rights of the issued MCIs or the issued MCIs in that class as applicable, present in accordance with paragraph A1-27(2)(c); and

- (f) any MCI Holder present in accordance with paragraph A1-27(2)(c) may demand a poll on any resolution.

Corporations Act Commentary

Under s 167AE, any proposal to change or cancel the rights of an MCI or a class of MCIs must be approved by a special resolution of the company and a special resolution (or a 75% written consent) of the holders of the affected MCIs.

Under s 9 and s 249L, a special resolution is a resolution of the mutual at a general meeting where at least 75% of the votes cast by persons entitled to vote are in support of the resolution, and where the meeting notice states the intention to propose the special resolution and states the resolution that is proposed.

Appendix 2 – Standing Orders

A2–1 Time Limits for Speakers

- (1) The mover of a motion may speak for no more than 5 minutes.
- (2) Subsequent speakers may speak for no more than 5 minutes.
- (3) The mover of the motion may reply for no more than 5 minutes.
- (4) The meeting is free to extend the time a speaker may speak.

A2–2 Amendment

- (1) On an amendment being proposed to an original motion, no second amendment may be considered until the first amendment has been dealt with.
- (2) An amendment, when carried, displaces the original motion and becomes the motion to which any further amendment may be moved.
- (3) If the amendment is not carried, then further amendments to the original motion may be considered.

A2–3 Speakers

- (1) The mover of an original motion has a right of reply.
- (2) The mover of an amendment does not have a right of reply.
- (3) Otherwise, a member may speak only once on the same question except to raise a point of order or, with the consent of the chair of the meeting, to give an explanation.

A2–4 Motions to be in Writing

Every motion and every amendment to a motion must be submitted in writing as and when the chair of the meeting requests.

A2–5 Closure of Debate

- (1) Debate on a motion or an amendment may be brought to a close by a resolution ‘that the question be now put’.
- (2) The motion ‘that the question be now put’ must be put to the meeting without debate.

Appendix 3 – Election of Directors

Postal Ballot

A3-1 Election

- (1) An election of directors is held by secret ballot to which the provisions of this Appendix apply.
- (2) A member who is a minor is not entitled to vote in an election of directors held under this Appendix.
- (3) The following table sets out the timetable for election of directors by members:

| Steps in Election Procedure | Time |
|---|---|
| Call for nominations (see clause A3-2(1)) | At least 100 days before AGM |
| Nominations close (see clause A3-2(2)) | At least 21 days after call for nominations |
| Returning officer must send ballot papers to members (see clause A3-8(1)) together with notice of the AGM | At least 21 days before AGM |
| Closure of the ballot (see clause A3-9) At least 14 days after ballot papers sent | At least 21 days before ballot papers sent |
| Announcement of directors (see clause A3-10(5)) AGM | AGM |

A3-2 Nominations

- (1) The board must give members a notice calling for nominations not less than 100 days before the AGM. The board may give this notice, in addition to any of the methods allowed in Rule 1.5, by advertisement:
 - (a) at the mutual's offices; or
 - (b) in newspapers.
- (2) The date nominations close:
 - (a) is determined by the board;
 - (b) must be no earlier than 21 days after notice is given under paragraph (1);
 - (c) must be specified in the notice given under paragraph (1).
- (3) 5 members together have the right to nominate a person. To nominate a person, the 5 members must give the mutual a notice of nomination before nominations close. The notice of nomination must:
 - (a) declare that the nominated person is eligible to be a director under Rule 13.2(1);
 - (b) declare that the nominated person is at least 18; and
 - (c) be signed by the nominating members and the nominated person.
- (4) A retiring director may stand for re-election without nomination.

- (5) The person nominated, or a retiring director standing for re-election, must:
- (a) provide the mutual with all information and consents the mutual reasonably requests to determine if the person is disqualified by law from acting as a director;
 - (b) provide the Nominations Committee with all information and documentation that the Nominations Committee reasonably requests to determine if the person is of appropriate fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy, and would contribute to the maintenance or enhancement of any skills and experience criteria notified to the Nominations Committee under Rule 13.10.
- (6) A person nominated, or a retiring director standing for re-election, becomes a candidate if and when the Nominations Committee:
- (a) has assessed the person's fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy; and
 - (b) has determined that there is no material reason to find that the person does not have the appropriate fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy; and,
 - (c) has determined that the person's appointment as a director would be likely to contribute to the maintenance or enhancement of the ability of the board to provide appropriate management of and guidance for the mutual, having regard to any skills and experience criteria notified to the Nominations Committee under Rule 13.10.

A3-3 Proceeding with Election

- (1) If the number of candidates is equal to or less than the number of positions to be filled:
- (a) the general meeting may appoint each candidate as a director by passing a separate resolution at the AGM;
 - (b) the election process otherwise set out in this Appendix is discontinued; and
 - (c) the mutual must give each member a notice that:
 - (i) states that the election process has been discontinued;
 - (ii) sets out the name of each candidate; and
 - (iii) states that the general meeting will vote on the appointment of each candidate as a director by a separate ordinary resolution at the AGM.

A3-4 Appointment of Returning Officers

- (1) The board must appoint a returning officer, who may appoint assistant returning officers, none of whom can be an officer of the mutual or a candidate.
- (2) The secretary must prepare and give the returning officer a roll of members entitled to vote in the election.

A3-5 Appointment of Scrutineer

- (1) A candidate may appoint a scrutineer.
- (2) The duties and responsibilities of scrutineers are:
- (a) to observe the sorting, counting and recording of ballot papers;
 - (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and

- (c) to raise any query with the returning officer regarding any of the ballot papers.

A3-6 Ballot Papers

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election.
- (2) The order in which the candidates appear on the ballot paper is to be determined by the returning officer by lot.
- (3) The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the members.

A3-7 Postal Voting Procedures

- (1) Postal voting will be conducted according to procedure specified by the returning officer as approved by the board.
- (2) In approving postal voting procedures the board must have regard to these matters:
 - (a) the extent to which the procedures are efficient in enabling the returning officer to detect any fraud or impropriety in the voting process;
 - (b) the extent to which the procedures protect the anonymity of the voter;
 - (c) instructions for voting are legible and clearly expressed so as to accurately inform members how to complete and lodge a ballot paper;
 - (d) provisions for issuing a duplicate ballot paper when the original has been lost or spoiled;
 - (e) the extent to which procedures for receiving, checking, scrutinising and counting ballot papers are efficient, having regard to Rules A3-7(2)(a) & (b); and
 - (f) the conduct and functions of scrutineers appointed by candidates.
- (3) The board must cause the postal voting procedures, as approved, to be displayed at the mutual's registered office and every branch office from the day before ballot papers are sent to members until the day after closure of the ballot.
- (4) A member is entitled to a copy of the postal voting procedures, on request

A3-8 Postal Vote

- (1) The returning officer must send to each member entitled to vote in the election, at least 21 days before the AGM:
 - (a) a ballot paper;
 - (b) a notice specifying the date the ballot closes as determined by the board in accordance with clause A3-9; and
 - (c) any other documents as required by the postal voting procedure
- (2) The returning officer must send ballot papers by mail or prepaid post and addressed to each member at the address shown in the Register of Members for the purposes of giving notices.
- (3) A member exercising a right to vote must:
 - (a) complete the ballot papers in accordance with the postal voting procedures;
 - (b) subsequently deal with the ballot paper in accordance with the postal voting procedures.

- (4) A member must ensure that the returning officer receives the member's ballot papers by noon on the day fixed for the closing of the ballot.
- (5) Any ballot paper that the returning officer receives after the ballot closes is informal.
- (6) A member who does not receive the member's ballot papers or who spoils them must give the returning officer a declaration to that effect. The returning officer must then send duplicate ballot papers to that member.

A3-9 Closure of the Ballot

The ballot closes on the date determined by the board, which must be at least 14 days after the date ballot papers are sent to members in accordance with clause A3-8(1).

A3-10 Procedures After Close of the Ballot

- (1) As soon as practicable after the ballot closes, the returning officer must check, scrutinise and deal with the ballots in accordance with the postal voting procedures.
- (2) The returning officer must count the votes.
- (3) The returning officer must:
 - (a) sign a declaration of the ballot as to the:
 - (i) names of the candidates appointed as directors;
 - (ii) votes cast for each candidate; and
 - (iii) number of votes rejected as informal; and
 - (b) deliver the declaration to the secretary.
- (4) A ballot paper is informal if:
 - (a) it is not authenticated as required by the postal voting procedures;
 - (b) it has no vote indicated on it; or
 - (c) it does not indicate the member's preference for a candidate.
- (5) The secretary must announce the results of the ballot at the next AGM.
- (6) If a member gives the mutual a written request, the mutual must make available to any member a copy of the returning officer's declaration of the ballot.
- (7) The returning officer must destroy the ballot papers three months after the declaration of the ballot.

A3-11 Voting System

- (1) The candidates with the highest number of votes in accordance with the number of vacancies are appointed as directors.
- (2) If 2 or more candidates have the same number of votes, the candidate appointed as a director is determined by lot.

A3-12 Irregularity in the Conduct of an Election

- (1) The candidates that the returning officer declares to have been appointed are appointed unless the secretary receives an objection to the ballot within 7 days of the end of the AGM.

- (2) If the board is of the opinion that the objection is reasonable, it may resolve to declare the returning officer's declaration void.
- (3) The returning officer must then conduct a further scrutiny in accordance with the Constitution the results of which prevail unless the board resolves to call a new poll by a unanimous resolution of all directors other than those appointed as a result of the ballot to which the objection relates.

A3-13 Electronic Voting

- (1) If the mutual has an electronic voting system which permits members to vote for the election of directors by electronic means, then the board may determine:
 - (a) that the members may record their votes in the election by electronic means; and
 - (b) the manner in which members will be identified for the purposes of voting in the election.
- (2) If the board makes such a determination:
 - (a) members may vote by post or by electronic means, but may only vote once;
 - (b) the returning officer shall provide an interactive copy of the ballot paper in a secure online system to facilitate voting by electronic means and make available to members all information reasonably necessary to facilitate voting by electronic means. Requirements for an authenticating mark of the returning officer on the ballot paper shall not apply, but the returning officer must ensure that a member cannot vote by electronic means more than once in the election;
 - (c) a member who votes by electronic means must ensure that ~~his or her~~ the vote is submitted to the returning officer in accordance with any instructions given for voting by electronic means;
 - (d) in respect of any vote received by the returning officer by electronic means, the returning officer must ensure that the fact that the member has voted is recorded;
 - (e) the returning officer must cause all votes received by electronic means to be recorded in such a way that they cannot subsequently be identified with any particular member;
 - (f) if a member lodges both a vote by post and a vote by electronic means, then the returning officer must:
 - (i) if one of the votes is informal, accept the formal vote; and
 - (ii) if both votes are formal, accept the vote received first; and
 - (g) the election procedure set out in the preceding clauses of Appendix 3 are deemed to be otherwise modified to the extent necessary to permit voting by electronic means.

Appendix 4 – Nominations Committee

A4-1 Appointment of Nominations Committee

- (1) The board must appoint a board committee of at least 3 persons to form the Nominations Committee, with at least one external non-director member~~the majority of whom must not be directors.~~
- (2) Employees of the mutual are not eligible to be appointed to the Nominations Committee.
- (3) Each person on the Nominations Committee must enter into an agreement with the mutual to keep confidential their assessments under Clause A4-2, during and after their appointment.

A4-2 Role of Committee

The Nominations Committee must assess all persons, including existing directors, prior to appointment or election as director under Rule 13.3, as to their fitness and propriety to be and act as a director, by reference to the board's Fit and Proper Policy.

A4-2A Board skills and experience maintenance

The Nominations Committee must assess all ~~non-directors~~persons seeking nomination as a director as to whether they would maintain or enhance any desired skills, experience, commercial experience or competency of the board, of which the Nominations Committee has been notified under Rule 13.10.

A4-3 Duty of Confidentiality

Each director must keep confidential any assessment of any other director, or person seeking appointment as director; during and after their term of office, except to the extent where disclosure is required by law, for example, to APRA.

Appendix 5 – Demutualisation Approval Procedure Rules

Division 1 — Introduction

A5–1 When the Demutualisation Approval Procedure Rules Apply

(1) This Appendix applies in the following situations:

| | | |
|-----|--|---|
| (1) | Modification or Repeal of Constitution | <p>the credit unionmutual proposes to modify or repeal this Constitution where the effect of the modification or repeal is:</p> <p>(a) to vary any of:</p> <p>(i) the terms on which it issues shares; or</p> <p>(ii) the rights and restrictions attaching to its shares, so that they are inconsistent with those set out in the Principles of Mutuality;</p> <p>(b) to enable the credit unionmutual to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality (whether or not any shares are so issued);</p> <p>(c) to vary any of the rights, obligations or restrictions attaching to membership so that they are inconsistent with those set out in the Principles of Mutuality;</p> <p>(d) to enable the credit unionmutual to admit members where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the Principles of Mutuality (whether or not any members are so admitted)</p> <ul style="list-style-type: none"> • (e) that the credit unionmutual's Constitution is otherwise inconsistent with the Principles of Mutuality. |
| (2) | Issue of Shares or Admission of Members | <p>the credit unionmutual (whether acting through its board, its members or otherwise) proposes:</p> <p>(a) to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality;</p> <p>(b) to issue securities which confer the right or obligation to subscribe for shares (whether on conversion of the securities or exercise of any option) where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality; or</p> <p>(c) to admit members with rights, obligations or restrictions attaching to membership inconsistent with those set out in the Principles of Mutuality.</p> |
| (3) | Restructure | <p>the credit unionmutual (whether acting through its board, its members or otherwise) proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure:</p> |

| | | |
|------------|--|--|
| | | <p>(a) the <u>credit union/mutual</u> no longer complies with the Principles of Mutuality;</p> <p>(b) one person, other than a person entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name, holds more than 90% of the shares in the <u>credit union/mutual</u> other than shares fitting the description of 'additional shares' in the Principles of Mutuality;</p> <p>(c) a group of associates, other than a group all of the members of which are entitled to use either the words 'credit union', 'credit society' or 'credit cooperative' in their name, between them hold more than 90% of the shares in the <u>credit union/mutual</u> other than shares fitting the description of 'additional shares' in the Principles of Mutuality;</p> <p>(d) a person not entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name has a legal or equitable interest in more than 20% of the <u>credit union/mutual</u>'s gross assets, based on the latest report that the <u>credit union/mutual</u> has given the Australian Prudential Regulation authority as at the time of the transfer;</p> <p>(e) a group of associates, other than a group all of the members of which are entitled to use either the words 'credit union', 'credit society' or 'credit cooperative' in their name, between them have a legal or equitable interest in more than 20% of the <u>credit union/mutual</u>'s gross assets, based on the latest report that the <u>credit union/mutual</u> has given the Australian Prudential Regulation authority as at the time of the transfer; or</p> <p>(f) the successor to the <u>credit union/mutual</u>'s business is not entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in its name.</p> |
| (4) | Modification or Repeal of this Appendix | <p>the <u>credit union/mutual</u> proposes to modify or repeal:</p> <p>(a) any of the Clauses in this Appendix;</p> <p>(b) any of the Principles of Mutuality; or</p> <p>(c) this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Appendix.</p> |

(2) This Appendix does not apply to proposed modifications or repeals set out in item (4) of the Table in Subclause A5–1(1) that:

- (a) increase the range of proposed transactions (including any changes to this Appendix so that it applies to the increased range of proposed transactions);
- (b) impose, modify or repeal additional restrictions on the conduct of proposed transactions other than those set out in this Appendix;
- (c) impose, modify or repeal additional obligations that must be complied with in relation to proposed transactions other than those set out in this Appendix;
- (d) require disclosure of additional types of information other than those set out in Clause A5–5 to Clause A5–8; or
- (e) modify or repeal any requirement specified in this Constitution, apart from this Appendix or the Principles of Mutuality, in relation to a proposed transaction.

However, this Appendix does apply to:

- (f) a proposed modification or repeal that makes more than 1 change, and 1 or more of the changes is within the scope of item (4) of the Table in Subclause A5–1(1) but not excluded by this Clause; or
 - (g) a proposed modification or repeal where some other Rule in this Constitution applies this Appendix to the modification or repeal.
- (3) This Appendix, other than Subclause A5–1(4), ceases to have effect immediately upon the following conditions both being met:
- (a) the Australian Securities and Investments Commission publishes a written notice that this Appendix ceases to have effect in relation to the ~~credit union mutual~~; and
 - (b) the Australian Securities and Investments Commission delivers a copy of the written notice to the ~~credit union mutual~~.

This Subclause is subject to any terms and conditions in the written notice.

- (4) If this Appendix ceases to have effect by reason of Subclause A5–1(3), it will again come into effect by board resolution upon the Australian Securities and Investments Commission doing any of the following:
- (a) withdrawing the written notice referred to in Subclause A5–1(3)(a);
 - (b) making an order or exemption that permits the ~~credit union mutual~~ to adopt or recommence the operation of this Appendix or provisions to the effect of this Appendix; or
 - (c) otherwise permitting the ~~credit union mutual~~ to recommence the operation of this Appendix.

A5–2 Definitions

- (1) In this Appendix:

associate means, in relation to a primary person:

- (a) a spouse or de facto spouse of the primary person;
- (b) a parent, son or daughter of the primary person, spouse or de facto spouse;
- (c) a person who is a partner of the primary person;
- (d) a person who is a director of a body of which the primary person is a director;
- (e) a person who is a trustee of a trust in relation to which a person or entity of a kind referred to in paragraphs (a), (b), (c), (d), (f) or (g) benefits or is capable of benefiting;
- (f) any entity, other than the ~~credit union mutual~~, over which:
 - (i) a person of a kind referred to in paragraphs (a), (b), (c), (d) or (e) has control;
 - (ii) 2 or more persons of a kind referred to in paragraphs (a), (b), (c), (d) or (e) together have control;
- (g) any entity, other than the ~~credit union mutual~~, in which:
 - (i) a person of a kind referred to in paragraphs (a), (b), (c), (d), (e) or (f) is beneficially entitled to more than 20% of any class of securities;
 - (ii) 2 or more persons of a kind referred to in paragraphs (a), (b), (c), (d), (e) or (f) together are beneficially entitled to more than 20% of any class of securities

control means the ability or power of an entity:

- (a) whether direct or indirect;
- (b) whether or not enforceable; and
- (c) whether presently exercisable by means of, in breach of or by revocation of any combination of the following:
 - (i) trusts;
 - (ii) relevant agreements; and
 - (iii) practices,

to dominate decision-making, directly or indirectly, in relation to the financial and operating policies of any other entity so as to enable that other entity to operate with it in pursuing those objectives of the controlling entity

entity means any:

- (a) incorporated or unincorporated body;
- (b) trust or partnership; or
- (c) any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives

independent expert means an expert who is not an officer of the ~~credit union~~mutual or an associate of an officer of the ~~credit union~~mutual

Principles of Mutuality refers to Principles 4 to 23 and 25 of the Principles of Mutuality in the Preamble to this Constitution to the extent that any of those Principles are not inconsistent with ASIC Policy Statement 147: Mutuality – Financial Institutions

proposed transaction means any of the modifications, repeals, issues, admissions, restructures or other transactions referred to in Subclause A5–1(1)

securities has the same meaning as in the *Corporations Act* from time to time, but also includes options.

- (2) Unless the context requires otherwise, terms that are not expressly defined in this Constitution, but that are defined in the *Corporations Act* from time to time, have the same meaning as in the *Corporations Act*.

A5–3 Demutualisation Approval Procedure

- (1) If this Appendix applies, the ~~credit union~~mutual must comply with the procedure set out in Divisions 2 and 3 before:
 - (a) convening a meeting of members to vote on the proposed modification or repeal of the Constitution set out in items (1) and (4) of the Table in Subclause A5–1(1);
 - (b) (issuing the securities or admitting the members as set out in item (2) of the Table in Subclause A5-1(1); or
 - (c) either convening, or, where relevant, applying for a court or other order to convene, one or more meetings (whichever is the earlier) to vote on the proposed restructuring or to appoint an administrator as set out in item (3) of the Table in Subclause A5–1(1).
- (2) If a meeting of members approves a proposed modification of the Constitution set out in items (1) and (4) of the Table in Subclause A5–1(1):

- (a) the resolution is of no effect until the procedure set out in Divisions 2 and 3 is complied with; and
 - (b) the credit union mutual must send each member a notice that the resolution has been passed in breach of this Appendix, together with the other documents required to be sent in Clause A5–5.
- (3) The procedures in this Appendix apply in addition to any requirements specified in the *Corporations Act* or this Constitution in relation to the proposed transaction.
- (4) If the proposed transaction is proposed by:
- (a) the board — the credit union mutual bears all costs associated with disclosure and conduct of the postal ballot;
 - (b) a member or a group of members — the member or group of members must pay all costs associated with disclosure, including printing and postage.

The board is not required to assist any member or group of members proposing the proposed transaction unless they give the credit union mutual an indemnity in a form satisfactory to the board.

- (5) If Subclause A5–3(4)(b) applies, members in general meeting may resolve that:
- (a) the credit union mutual pay all costs associated with disclosure and conduct of the postal ballot;
 - (b) the credit union mutual reimburse the members proposing the proposed transaction for the costs associated with disclosure and conduct of the postal ballot they incur.

A5–4 Approval of Demutualisation

- (1) If this Appendix applies, the credit union mutual may only act upon the proposed transaction if:
- (a) it has complied with the procedure set out in Divisions 2 and 3; and
 - (b) if the credit union mutual has only one class of members:
 - (i) not less than 25% of the members who are entitled to vote have voted at the postal ballot conducted under Division 3; and
 - (ii) not less than 75% of the members who have voted approved of the proposed transaction;
 - (c) if the credit union mutual has more than one class of members:
 - (i) not less than 25% of the members in each class who are entitled to vote have voted at the postal ballot conducted under Division 3; and
 - (ii) not less than 75% of the members who have voted in each class approved of the proposed transaction.
- (2) A member who is a minor is not entitled to vote in a postal ballot conducted under Division 3.

Division 2 — Disclosure

A5–5 Disclosure Documents Sent With Ballot Paper

The credit union mutual must send the following documents with the ballot paper that it must send each member under Clause A5–14:

- (a) a disclosure statement as described in Clause A5–6;

- (b) a director's statement from each director as described in Clause A5–7; and
- (c) an independent expert's report, commissioned by the credit union mutual, as described in Clause A5–8.

A5–6 Disclosure Statement

(1) The disclosure statement must adequately set out or explain the following (if relevant):

- (a) the procedural steps required in relation to the proposed transaction;
- (b) how members' rights will change as a result of the proposed transaction and the consequences of the proposed transaction for members, including any:
 - (i) loss of rights;
 - (ii) change as to voting rights and rights to participate in the reserves and profits of the credit union mutual;
- (c) what benefits (if any) will be offered to members if the proposed transaction occurs, and why the benefits are considered appropriate, taking into account, among other things, the extent to which the benefits compensate the members for loss of rights;
- (d) the basis upon which members' entitlement to the benefits will be determined, including:
 - (i) any minimum period of membership that a member must satisfy to receive benefits;
 - (ii) whether members must pay any amount or provide other value to receive benefits;
- (e) any preferential allocation of benefits to members, or a class of members, and how that allocation is to be determined;
- (f) any benefits that officers of the credit union mutual (including retiring officers) or any associates of any officers may receive (whether directly or indirectly) in connection with the proposed transaction, other than in their capacity as a member on the same terms as are available to other members, including without limitation:
 - (i) any money or goods;
 - (ii) any preferential allocation of securities;
 - (iii) any retirement or superannuation benefits;
 - (iv) any compensation for loss of office;
 - (v) any concessional loans or other favourable or non-arms length transactions;
- (g) the implications of the proposed transaction in relation to:
 - (i) the continuation of the credit union mutual's business;
 - (ii) any major changes to be made to the credit union mutual's business; and
 - (iii) changes to benefits, products and services;
 - (iv) the future employment of the present employees of the credit union mutual;
- (h) whether the credit union mutual's financial position has changed materially since the last balance sheet put before members at the last AGM;
- (i) the availability and consequences of other alternatives; and

- (j) any other information that the members and their professional advisers would reasonably require to make an informed assessment whether to approve the proposed transaction.
- (2) If the proposed transaction involves the allocation of securities (whether by the ~~credit union~~ mutual or some other entity) the disclosure statement must adequately set out or explain the following (if relevant):
- (a) who will and will not be allocated securities;
 - (b) the rights and obligations attaching to the securities being allocated, including voting rights and rights to participate in the reserves and profits;
 - (c) the class and approximate number of securities being allocated;
 - (d) the allocation formula for the securities (including the implications of any undersubscription or oversubscription of securities offered), including, without limitation:
 - (i) the manner in which the allocation formula will apply as between members; and
 - (ii) the basis on which the allocation formula has been determined;
 - (e) if rights to securities are allocated — whether the rights are renounceable or nonrenounceable;
 - (f) the consideration payable for the securities, including, if the securities are partly paid, any call dates and amounts payable on calls;
 - (g) if the allocation of securities is underwritten:
 - (i) the name of the underwriters;
 - (ii) the amount of the underwriting fee or commission payable;
 - (iii) details of clauses in the underwriting agreement that may affect the underwriter's rights and obligations under the underwriting agreement;
 - (h) whether the securities will be listed on a securities exchange or exempt market; and
 - (i) the implications of allocation of securities for the structure of the ~~credit union~~ mutual.
- (3) If the proposed transaction involves the modification or repeal, as set out in item (4) of the Table in Subclause A5–1(1), and the person proposing the modification or repeal is aware of any proposal to conduct any of the transactions set out in items (1) to (3) of the Table in Subclause A5–1(1), then the disclosure statement must disclose the matters set out in Subclause A5–6(1) and Subclause A5–6(2) in relation to:
- (a) the proposed modification or repeal; and
 - (b) each proposed transaction set out in items (1) to (3) of the Table in Subclause A5–1(1) of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).

A5–7 Director's Statement

The director's statement must contain:

- (a) a statement:
 - (i) recommending that the proposed transaction be approved or not approved, and giving reasons for the recommendation; or
 - (ii) giving reasons why a recommendation is not made;

- (b) a statement whether the director proposes to approve or not approve the proposed transaction;
- (c) a statement confirming that neither the director nor any associate of the director will receive any pay, other valuable consideration or any other benefit in connection with the proposed transaction other than as disclosed in the disclosure statement; and
- (d) particulars of any agreement between the director and any other person in connection with, or conditional upon, the outcome of the proposed transaction.

A5–8 Independent Expert’s Report

- (1) The independent expert’s report must adequately set out or explain the following (if relevant):
 - (a) whether, in the independent expert’s opinion, the proposed transaction is in the best interests of the members, and giving reasons for that opinion;
 - (b) whether, in the independent expert’s opinion, the benefits being provided to the members are fair and reasonable, having regard to any:
 - (i) loss of rights; and
 - (ii) change as to voting rights and rights to participate in the reserves and profits of the ~~credit union~~mutual, and giving reasons for that opinion; and
 - (c) details of:
 - (i) any relationship between the independent expert and the ~~credit union~~mutual, including any circumstances in which the independent expert gives it advice or acts on its behalf, in the proper performance of the functions attaching to the independent expert’s professional capacity or business relationship with the ~~credit union~~mutual;
 - (ii) any financial or other interest of the independent expert that could reasonably be regarded as being capable of affecting the independent expert’s ability to give an unbiased opinion; and
 - (iii) any benefit that the independent expert or any associate of the independent expert may receive (whether directly or indirectly) in connection with making the report or in connection with the proposed transaction.
- (2) If the ~~credit union~~mutual commissions more than 1 independent expert’s report, all of the reports must be sent to each member.

Division 3 — Postal Ballot

A5–9 Appointment of Returning Officer

- (1) The board must appoint as returning officer for the ballot a person having the qualifications, experience or standing appropriate for appointment.
- (2) The returning officer may, if necessary, appoint 1 or more persons to act as assistant returning officers or clerical assistants.
- (3) A member is not eligible to be appointed as a returning officer or assistant returning officer.
- (4) The returning officer may delegate any of the returning officer’s functions in this Division to an assistant returning officer having the qualifications, experience or standing to exercise those functions.
- (5) A person ceases to hold office as a returning officer or assistant returning officer if the person:

- (a) dies; or
- (b) resigns by notice of resignation delivered to the ~~credit union~~mutual; or
- (c) is removed from office by the members.

A5–10 Roll

As soon as practicable after the board appoints the returning officer for the postal ballot, the secretary must give the returning officer a roll showing, as at the time the roll is given:

- (a) the members who are entitled to vote and the number of shares each member holds; and
- (b) if the shares are divided into different classes — the members who are entitled to vote who hold shares in each class and the number of shares of each class each member holds.

A5–11 Notice of Proposed Postal Ballot

- (1) As soon as practicable after being appointed as returning officer for a postal ballot, the returning officer must cause notice of the proposed ballot to be:
 - (a) sent to each member entitled to vote; or
 - (b) published in a newspaper circulating generally throughout all jurisdictions in which the ~~credit union~~mutual has members.
- (2) The notice must:
 - (a) state that a postal ballot is to be held;
 - (b) state the proposed transaction that is to be put to voters at the ballot; and
 - (c) state the closing date for the ballot.

A5–12 Postponement of Closing Date

- (1) The returning officer may postpone (for not more than 7 days on any 1 occasion) the date for the close of the ballot by notice published in a newspaper circulating generally throughout all jurisdictions in which the ~~credit union~~mutual has members.
- (2) The returning officer may exercise the power conferred by this Clause more than once in respect of a ballot.

A5–13 Printing of Ballot Papers

The returning officer must ensure that a sufficient number of ballot papers is printed for the purposes of the ballot.

A5–14 Postal Voting Procedures

- (1) Postal voting will be conducted according to procedure specified by the returning officer as approved by the board.
- (2) In approving postal voting procedures the board must have regard to these matters:
 - (a) the extent to which the procedures are efficient in enabling the returning officer to detect any fraud or impropriety in the voting process;
 - (b) the extent to which the procedures protect the anonymity of the voter;

- (c) instructions for voting are legible and clearly expressed so as to accurately inform members how to complete and lodge a ballot paper;
 - (d) provisions for issuing a duplicate ballot paper when the original has been lost or spoiled;
 - (e) the extent to which procedures for receiving, checking, scrutinising and counting ballot papers are efficient; and
 - (f) the conduct and functions of scrutineers.
- (3) The board must cause the postal voting procedures, as approved, to be displayed at the ~~credit~~ ~~union~~ mutual's registered office and every branch office from the day before ballot papers are sent to members until the day after closure of the ballot.
- (4) A member is entitled to a copy of the postal voting procedures, on request

A5–15 Distribution of Ballot Papers

Not less than 28 days before the closing date for the ballot, the returning officer must cause to be sent to each member on the roll, at the address specified in respect of the member in the roll:

- (a) a ballot paper that bears the initials of the returning officer or a deputy returning officer;
- (b) any other documents as required by the postal voting procedure.

A5–16 Replacement of Ballot Papers

- (1) If any member to whom a ballot paper has been sent satisfies the returning officer that the ballot paper has been spoilt, lost or destroyed, the returning officer may issue the member with a replacement ballot paper.
- (2) The returning officer must keep a record of all replacement ballot papers so issued.

A5–17 Voting

- (1) A member who wishes to vote in a postal ballot must:
 - (a) complete the ballot papers in accordance with the postal voting procedures; and
 - (b) subsequently deal with the ballot paper in accordance with the postal voting procedures.
- (2) A member's vote in the postal ballot may be counted only if:
 - (a) the member has voted in the way required by this Clause; and
 - (b) the returning officer receives the ballot paper in accordance with the postal voting procedures on or before the date for the close of the postal ballot.

A5–18 Appointment of Scrutineers

- (1) The board may appoint a scrutineer to monitor the scrutiny and the counting of postal votes.
- (2) Any other interested person, with the consent of the returning officer, may appoint a scrutineer to monitor the scrutiny and counting of the postal votes.
- (3) A scrutineer is entitled to be present at the scrutiny and counting of postal votes.

A5–19 Scrutiny

- (1) As soon as practicable after the ballot closes, the returning officer must check, scrutinise and deal with the ballots in accordance with the postal voting procedures.

- (2) A ballot paper is informal if:
 - (a) it is not authenticated as required by the postal voting procedures;
 - (b) it has not been completed so as to show a vote.

A5–20 Counting of Votes

- (1) The returning officer must then proceed to count the votes.
- (2) The returning officer may make use of electronic data processing equipment in the counting of votes.
- (3) On completing the count, the returning officer must make out a return to the credit union mutual certifying:
 - (a) if the credit union mutual has only one class of members:
 - (i) the number and percentage of members who voted in the postal ballot; and
 - (ii) the number and percentage of votes in favour of the proposed transaction; and
 - (b) if the credit union mutual has more than one class of members:
 - (i) the number and percentage of members in each class who voted in the postal ballot; and
 - (ii) the number and percentage of votes in each class in favour of the proposed transaction.