

Constitution Review

Defence Bank Limited

October 2024

PROPOSED AMENDMENTS TO BE MADE AT 2024 ANNUAL GENERAL MEETING

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PROPOSED AMENDMENTS

1. Introduction

We have been asked by the Governance and Remuneration Committee (**GRC**) of Defence Bank Limited (**DBL** or **Company**) to advise on possible improvements to the Constitution of DBL with an objective of operational efficiency. The changes set out in this document are proposals which reflect the current view of the GRC after the recent presentation of an options paper and a discussion with the GRC at its meeting on 30 April 2024.

This document sets out proposals to improve the Constitution in various ways. It is accompanied by a marked-up version of the Constitution.

2. Opinion on proposed amendments

The Constitution is presently generally well drafted, although dense, and is consistent with high standards of corporate governance.

The proposed changes set out in this document are, in our opinion, all reasonable and also consistent with good governance.

Readability of the Constitution can be improved by insertion of new headings and changing the extent of use of bold text throughout the document, as we have done in the accompanying version. Such changes are administrative and presentational, not substantive changes to the rules.

3. Duration of term of office of directors

3.1 **Term of office – default position for directors**

From 2025, we have proposed shortening the length of service after which a person would be ordinarily considered ineligible for re-appointment as a director of the Company.

Rule 13.2(3) would read as follows:

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.

We also propose that Rule 13.2(4), which provides virtually identical restrictions as to length of service in respect of the appointment of a director by the board where there is a casual vacancy, should be amended as follows:

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.

3.2 Term of office – chair and board discretion

It is proposed that the shortened length of service provided for under paragraph (c) under each of Rule 13.2(3) and Rule 13.2(4) is subject to Rule 13.2(6).

The proposed new Rule 13.2(6) would provide as follows:

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.

We consider that this strikes a balance between the shortening of the permitted length of service under Rules 13.2(3) and 13.2(4), while permitting the board to extend this period where a director is chair of the board or one director is in possession of such skills and experience that the board considers it would be in the interests of the company not to lose.

4. Nominations Committee

4.1 Composition of Nominations Committee

We have proposed the following amendment to Rule A4-1(1) in Appendix 4:

The board must appoint a board committee of at least 3 persons to form the Nominations Committee, ~~the majority of whom must not be directors~~ with at least one external non-director member.

By this proposed amendment the Nominations Committee becomes a board committee, but one with an external member. This provides for greater alignment between the work of the committee and the board's assessment of the needs of the company. It should reduce the current anxiety of committee members about their role.

4.2 Assessment of skills and experience

We have proposed changes to remove the requirement for the Nominations Committee to assess the skills and experience of retiring directors standing for re-election. We consider it would be a better allocation of the Company's resources to consider the skills and experience of new candidates for director, rather than those directors whom it has previously assessed and with whom it is presumably already familiar.

In order to achieve this, we have proposed the following amendment to Rule A4-2A in Appendix 4:

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.

This proposal would also necessitate a consequential amendment to Rule 13.2(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.

The Nominations Committee also assesses all persons, including existing directors, as to their fitness and propriety prior to appointment or election as director. We have not proposed removing this requirement in respect of retiring directors seeking re-election. This is because, unlike with respect to skills and knowledge, we do not consider the efficiency gain with respect to the allocation of the Company's resources to outweigh the potential damage to the Company of a person who is not fit and proper securing re-election.

5. Quorum for board meetings

We have proposed a reduction of the quorum for a board meeting from 5 to 4 directors for any time that the board is constituted by 7 or fewer directors. If 8 or more are in office the quorum would remain 5.

The opportunity is proposed to be taken to clarify that directors participating remotely in a board meeting do count toward the quorum.

Similarly, it is proposed that a circular resolution needs to be signed by only 66% of directors, rather than 75%. This would mean that only 5 of 7 directors would need to sign. Circular resolutions should have a high degree of 'participation' for their carriage, but with usually at least 2 ADF personnel on the board there could be circumstances where urgent decisions are required but not every director is available.

6. Defence force personnel representation on the board

In determining its composition, the board considers it to be essential that the board includes those who have experience of service in the ADF.¹

To ensure that this is front of mind in circumstances where there is a casual vacancy to be filled, we have proposed the addition of a new clause 13.4(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

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

It would be cumbersome to create similar rules applying to director election by members, and arguably unnecessary because the members - as mostly ADF personnel themselves - would be expressing a view on the importance of their representation on the board by how they vote in the process.

The opportunity is proposed to be taken to otherwise simplify the drafting of clause 13.4 (by simplifying clause 13.4(1) and removing, as unnecessary, the existing clause 13.4).

¹ Policy 1 - Board (June 2022), *Defence Bank Policy Manual*, 38.

7. Miscellaneous

7.1 Headings

We consider that the overall readability of the Constitution would be enhanced by some minor amendments to improve the consistency and visual prominence of rule headings.

Firstly, we recommend that all rule headings should be in bold.

Secondly, for the same reason, we have proposed that rule headings should be given additional visual prominence by increasing the font size of each heading relative to the text of each rule.

7.2 Use of bold text

One feature of the current constitution which makes it a 'heavy read' and a slightly unfriendly document is the excessive use of bold text. This arises because defined terms are in bold and italics throughout the document.

We propose that the use of bolding and italicisation, other than in the definitions section, be discontinued.

7.3 Outdated terminology

The constitution contains some historical references to Defence Bank being a credit union. These should be replaced by a neutral reference (by adopting the current label for the bank which is "the mutual"). In addition, some references to gender can be eliminated by minor redrafting (eg reference to "the director" rather than "him or her").

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