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# CONSTITUTION

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# Preamble

The **company** is a public company limited by shares organised on the basis of the following Principles of Mutuality:

## Principles of Mutuality

### Customers Must be Members

1. Subject to the exceptions in Principles 2, 3, and 3A a mutual may not, unless otherwise provided in its Constitution accept deposits from, or provide financial accommodation to, a person who is not a member.
2. A mutual may accept deposits from, or grant financial accommodation to, a body that does not have the power to acquire, or that the law prohibits from acquiring, the mutual's shares.
3. A mutual may accept deposits from, or grant financial accommodation to, another ADI.
- 3A. A mutual may accept deposits from, or grant financial accommodation to, any person or class of persons as determined by the board from time to time in its absolute discretion, provided any financial accommodation is on arm's length terms.

### 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 mutual may issue a person*

5. Subject to the exception in Principle 6, a 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 mutual may issue member shares as wholly paid or partly paid or nil paid.
8. A mutual may only issue a wholly paid or partly paid member share to a person in return for valuable consideration.
9. The person must provide consideration in cash or, in relation to nil paid or 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 mutual's members.

#### *Dividends and Surplus*

11. A member share may confer a right to participate in the mutual's profits through payment of dividends.
12. A member share must confer a right to participate in surplus when the 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 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 mutual other than member shares are additional shares.

*Issue of additional shares only to members*

18. A mutual may only issue additional shares to a person who has been a member of the mutual continuously for the past 6 months.

*Voting*

19. Subject to the exceptions in Principle 20, an additional share must not confer the right to vote.
20. Additional shares may confer the right to vote, at meetings of the holders of additional shares, on questions affecting the continuing existence of the mutual.

*Dividends and Surplus*

21. An additional share may confer the right to participate in the mutual's profits through payment of dividends.
22. An additional share may confer a right to participate in surplus when the 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.
23. 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*

24. An additional share may confer on the holder of the additional share a right to redeem or, subject to Principle 25, to transfer the additional share.
25. The holder of additional shares may only transfer additional shares to a person who has been a member of the mutual continuously for the past 6 months.

**Accumulation of Securities**

26. Accumulation of securities issued by a 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 mutual.

**Directors**

27. Only a member of a mutual may be a director of the 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 Definitions

In this Constitution, unless the context requires otherwise:

**ADI** means a body corporate that **APRA** has authorised to conduct banking business in Australia under the *Banking Act 1959* (Cth)

**AGM** means an annual **general meeting**

**APRA** means the Australian Prudential Regulation Authority

**board** means the board of **directors**

**Board Nomination Committee** means the committee appointed by the **board** in accordance with Appendix 5

**candidate** means the person nominated to be a candidate for election as a **director** in accordance with clause A6-2(3) 'Nominations' of Appendix 6

**common bond** refers to the common bond of membership, if any, set out in Appendix 2

**Company** means Summerland Financial Services Limited ABN 23 087 650 806 (formerly called Summerland Credit Union Limited).

**Corporations Act** means Corporations Act 2001 (Cth)

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

**director** means a director for the time being of the **company**

**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 **company**);
- 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,

that the **company** provides or enters in the ordinary course of its banking business

**fit and proper policy** means a written policy adopted by the **board** relating to the fitness and propriety of **directors**, senior managers and auditors of the **company**, meeting the requirements of **Prudential Standard** APS 520 or any other **prudential standard** or provision of law which is from time to time applicable

**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 2001*

**member** means a person whose name the **company** has entered for the time being in the Register of Members it keeps under the *Corporations Act*

**member share** means a share as described in Appendix 3

**Mutual Capital Instrument** or **MCI** means a share in the capital of the company which meets the requirements of a Mutual Capital Instrument as prescribed by the *Corporations Act*.

**MCI Holder** means the holder of a Mutual Capital Instrument

**prudential standard** means:

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

#### **Banking Legislation Commentary**

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

The Treasurer may make prudential regulations under the *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 unions.

**secretary** means a secretary for the time being of the **company**

**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.
  - h) a reference to something being written or in writing or printed is technology neutral and is a reference to any mode of representing or reproducing words in tangible and permanently visible form and includes without limitation emails, faxes and documents in electronic form.
- 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 company 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 **company's** registered office.

### 1.4 Replaceable Rules do not Apply

The replaceable rules in the *Corporations Act 2001* 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 company and its members, directors and secretaries: see s 140(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 New South Wales.
- 3) A person sending a notice must do so in writing and subject to delivery method 5 in Sub rule 1.5(4) must address it to the recipient at the following respective addresses:

- a) if to the **company** — at its registered office or such other address as the **company** specifies 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 an alternative address nominated by the Member or to the fax number or electronic address nominated by the Member.

**Note:** Subrule 3.3(3) deals with sending notices to joint members.

- 4) With the exception of Notices of General Meetings to which method 5 in the attached table applies 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:

<b>Delivery Method</b>		<b>Time Person Receives Notice</b>
<b>1</b>	<b>Hand delivering the notice personally</b>	The other person receives the notice: (i) if hand delivered before 4:00pm on a <b>business day</b> — on that <b>business day</b> (ii) if hand delivered after 4:00pm on a <b>business day</b> — on the next <b>business day</b> (iii) if hand delivered on a day other than a <b>business day</b> — on the next <b>business day</b>
<b>2</b>	<b>Sending the notice by pre-paid post</b>	The other person receives the notice on the third <b>business day</b> after posting unless it is actually delivered earlier
<b>3</b>	<b>Sending the notice to a fax number or electronic address</b>	The other person receives the notice: (i) if sent before 5:00pm on a <b>business day</b> — on that <b>business day</b> (ii) if sent after 5:00pm on a <b>business day</b> — on the next <b>business day</b> (iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b> This rule does not apply where the person sending the facsimile or electronic notice has evidence that the transmission was unsuccessful
<b>4</b>	<b>Sending the notice by other electronic means</b>	The other person receives the notice: (i) if sent before 5:00pm on a <b>business day</b> — on that <b>business day</b> (ii) if sent after 5:00pm on a <b>business day</b> — on the next <b>business day</b> (iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b> 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
<b>5</b>	<b>Placing a Notice of a General Meeting in the Public Notices section of a newspaper or newspapers generally circulating in the Far North Coast area of New South Wales and</b>	The other person receives the notice: on the day of the advertisement appearing in the newspaper. Publication on the website occurs on the day the notice is uploaded.

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	upon any web site maintained by the company	
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- 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.

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## Division 2. — Objects & Limit on Powers

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### Corporations Act Commentary

The *Corporations Act* provides that the company 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 company's objects and to expressly limit the company's exercise of its powers: see s 125. The limit on power in Rule 2.2 is a requirement of the Principles of Mutuality.

### 2.1 Objects

The **company** has the objects set out in Appendix 1.

### 2.2 Customers Must be Members

- 1) Subject to Subrule (2), the **company** must only accept deposits from, or provide financial accommodation to, its **members**.
- 2) Subrule 1) 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 **company's** shares; or
  - b) **ADIs**; or
  - c) Any person or class of persons as determined by the **board** from time to time in its absolute discretion.

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## Division 3. — Membership

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### Corporations Act Commentary

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

### 3.1 Admission to Membership

- 1) Subject to any other Rule allowing admission of **members**, the **company** may admit a person as a **member** only if:
  - a) the person accepts a written offer of membership from the **company** and the person applies for a **member share**. An application for membership may be made by completing an electronic application form, signing it (whether electronically or otherwise) and returning it to the company. An electronic application received by the company will be taken to be signed electronically by a person if the application form has been verified in the manner approved by the directors from time to time;
  - b) if the **company** has a **common bond** — the person provides evidence, satisfactory to the **company**, that the person is eligible to be a **member** under the **common bond**;
  - c) if the person is not a minor — the person subscribes for 1 Member Share at an issue price of \$10.00 per share and which is paid up to the amount required by the Directors; and
  - d) if the person is a minor — the person subscribes for 1 Member Share at an issue price of \$10.00 per share and which is paid up to the amount required by the Directors upon attaining the age of 18.

**Note:** The **company** may also admit a person as a **member** by registering a transfer or transmission of a **member share** to the person under Rule9.3, Rule10.2, Rule 10.3 or Rule10.4.

- 2) The **board** has an absolute discretion in exercising the power to offer membership to a person or to admit a person as a **member** without any obligation to give a reason for not offering membership or not admitting a person as a member..
- 3) When the **company** admits a person as a **member**, the **company** 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 2001*; and
  - c) give the person notice that it has admitted the person as a **member**.

### 3.2 Delegation of Power to Admit Members

- 1) The **board** may delegate its power to admit **members** and non-members to officers of the **company**. The delegation must not include authority:
  - a) if the **company** has a **common bond** — to admit persons referred to in Appendix 2;

- b) to reject an application, such applications being forwarded to the **board** for consideration; or
- c) to further delegate the power to admit **members**.

### 3.3 Joint Members

#### Corporations Act Commentary

The *Corporations Act* allows 2 or more persons jointly to be a member and hold shares in 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).

- 1) The **company** may admit 2 or more persons eligible for admission under Subrule 3.1(1) as a joint **member** of the **company**.
- 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 **company** 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 **company** 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 **company** a notice requiring the **company** 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 **company** 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 **company** may accept **deposits** from, or 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**.

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## Division 4. — Termination of Membership

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

- 1) The **company** can remove the **member's** name from the Register of Members if:
  - a) the **company** redeems the **member's member share** under Rule 4.2, Rule 4.3 or Rule 4.4;
  - b) the **company** 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 **company** 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 **company** 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 **company** registers the transfer of the **member's member share** to another person who is to act as trustee for the unincorporated association;

**Note:** Rule 2.2 restricts the **company** from accepting further **deposits** from, or 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 upon withdrawing all **deposits** and repaying all **financial accommodation**.
- 2) If a **member** makes a request under Subrule (1), the **company** must redeem the **member's member share** as soon as practicable after receiving the request. However, the **company** may defer redeeming the **member's member share** until the **board** is satisfied that:
  - a) the **member** has withdrawn all **deposits** and repaid all **financial accommodation**;
  - b) immediately after redeeming the **member share**, the **company** will not be in breach of any **prudential standard**; and
  - c) the **company's** capital base is adequate for purposes of **APRA's** supervision of capital adequacy;
  - d) if **APRA** has restricted the **company** redeeming **member shares** (whether by direction or otherwise) – the restriction no longer applies; and
  - e) the **company** has sufficient profits available to pay the amount payable on redemption of the **member share**.

### 4.3 Termination of Membership

- 1) The board may by resolution terminate a member's membership by redeeming the member's member share, if
  - a) the member fails to discharge the member's obligations to the company;
  - b) the member has conducted themselves in a way that the board reasonably considers to be detrimental to the company; or
  - c) the member obtains membership by misrepresentation or mistake.
- 2) On redeeming the member share, the company may pay the amount payable on redemption of the member share to the member by either
  - a) paying the amount in reduction of any monies owing by the **member** to the **company**; or
  - b) sending a cheque to the **member's** address as set out in the Register of Members; or crediting the funds electronically to an ADI account nominated by the member.

### 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.
- 2) The **company** may:
  - a) determine that the **member's deposit** accounts are dormant; and
  - b) redeem the **member's member share**,  
  
by board resolution if the **member** has not initiated any transactions in relation to any **deposit** account in the 24 month period before the date of the resolution.
- 3) The **company** must send notice of the proposed resolution under Subrule (2) to the **member** at the **member's** last known address as shown on the Register of Members at least 28 days before considering the proposed resolution.
- 4) On redemption of the **member share**, the **company** must pay the amount payable on redemption of the **member share** into the **member's** account.
- 5) If the **company** redeems a person's **member share** under this Rule, the person may require the **company** to reinstate the person's **deposit** accounts at any time before the **company** pays the money in the **deposit** account in accordance with the relevant unclaimed money legislation. If the person requires the **company** to reinstate the person's **deposit** accounts:
  - a) the **company** must reinstate the person's **deposit** accounts as soon as practicable; and
  - b) if the **company** has redeemed the **member's member share** — the **company** must issue a **member share** to the person and may debit the **member's deposit** account for the subscription amount.

#### Banking Legislation Commentary

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



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## Division 5. — Issue of Shares

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### 5.1 Classes of Shares

The *company* may only issue *member shares*.

### 5.2 Board Power to Issue Shares

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

### 5.3 Restrictions on Issue of Member Shares

- 1) The *company* 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 *company* may only issue *member shares*.
  - a) to persons who are not minors on the basis that the person pays the full *subscription price* (or such other amount agreed by the directors) in cash on issue; and
- 3) The *company* may only issue 1 *member share* to any person. However, the *company* 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 *company* can issue a *member share* to a person who already constitutes a joint *member*. See *Corporations Act 2001* commentary at Rule 3.3

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## Division 6. — Calls, Forfeiture and Liens

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### 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 **company** calling up payment of some or all of the unpaid **subscription price**. This Rule applies in relation to a share subject to:
  - a) any restriction in this **Constitution** and in the terms of issue for the share; and
  - b) any **special resolution** providing that the **company** can only call up some or all of the **subscription price** for shares if the **company** becomes an externally-administered body corporate
- 2) The **company** may call for payment of any amount of the unpaid **subscription price** for a share by **board** resolution. The **company** must give a **member** holding a share on which the **company** has made a call a notice setting out how much, when and how the **member** must make the payment. The **company** must give the notice at least 14 days before the time the **member** must pay the call.
- 3) The **company** may revoke or postpone a call on a share by **board** resolution. The **company** must give each **member** holding a share for which the **company** 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 **company'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 **company** gave the **member** a notice in accordance with Subrule 2).
- 5) At any time, the **company** 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 **company** may have against the **member**.
- 2) The **member** must pay:
  - a) the amount due on the share; and

- b) all costs and expenses that the **company** 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 **company** may waive all or part of the expenses payable under this Subrule by **board** resolution.

- 3) At any time while the amount payable under Subrule 2) remains unpaid in respect of a share, the **company** 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 **company** 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 **company** as at the date the **company** issues the default notice.

### 6.3 Forfeiture and Surrender

- 1) If a **member** does not comply with the default notice issued under Sub rule 6.2(3), the **company** 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 **company** 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 **company's** property. The **company** 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 **company** 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 **company** the amounts due:
  - a) less any amount that the **company** must pay the **member** on redemption of the shares; and
  - b) less any amount that the **company** receives on sale or disposal of the forfeited shares.

### 6.4 Liens

- 1) The **company** may at any time exempt a share wholly or in part from this Rule by **board** resolution.
- 2) The **company** 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

for all amounts, whether presently due or not:

- c) payable in relation to the share; or
  - d) that the **member** or the **member's** estate otherwise owes to the **company**.
- 3) If an amount secured by a lien in Subrule 2) is presently due, the **company** 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 **company** may sell the share.

The date for payment must be at least 14 days after the date on which the **company** 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 **company** as at the date the **company** 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 **company** may sell the shares on the terms and in the manner that the **board** determines. The **company** 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 **company** all amounts that the **member** or the **member's** estate owes to the **company**, whether or not presently due, less any consideration that the **company** receives on sale of the shares.

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## **Division 7. — Dividends**

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NOT APPLICABLE – REFER A3-4

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## Division 8. — Share Certificates

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### Corporations Act Commentary

The company does not have to issue certificates to members for member shares: see *Corporations Regulations* reg 12.08.08. However, if the company issues other classes of shares it will have to issue certificates for those other classes of shares: see s 1071H.

A member whose certificate is lost or destroyed may apply to the company for a new certificate. The company 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 company with an indemnity: see s 1070D.

### 8.1 Share Certificates

- 1) This Rule does not apply in relation to *member shares*.

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## Division 9. — Transfer of Shares

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### 9.1 Form of Share Transfer

- 1) A **member** wishing to transfer the **member's** shares 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 company 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 **company** 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 **company** 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 **company** may refuse to register a share transfer unless:
  - a) the shares are fully-paid;
  - b) the **company** 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, if issued, 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 **company**.

- 3) The transferor of shares remains the holder of those shares until the **company** enters the transferee's name as holder of those shares in the Register of Members.

#### **Corporations Act Commentary**

If a company refuses to register a transfer of shares, it must give the transferee notice of the refusal within 2 months of the date the share transfer was lodged at the company's registered office: see s 1071E.

### **9.4 Powers of Attorney**

- 1) The **company** 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 **company** 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.

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## Division 10. — Transmission of Shares

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### 10.1 Transmissions and the Common Bond

The **company** 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 **company** 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 **company** to register the trustee as holder of the **member's** shares.

### 10.4 Transmission of Shares on Mental Incapacity

- 1) 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 **company** 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**.

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## Division 11. — Holding Members' Meetings

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### Corporations Act Commentary

#### **Holding a members' meeting**

A company may hold a meeting of its members:

- (a) at one or more physical venues; or
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only, if this is required or permitted by the company's constitution expressly.: see s 249R and Summerland Rule 11.1A.

#### **Use of virtual meeting technology**

A members' meeting must give the members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting: see s 249S. If the meeting is held using virtual meeting technology (whether or not it is held at one or more physical venues), that virtual meeting technology must be reasonable and allow the members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise orally and in writing any rights of those members to ask questions and make comments.

#### **Place and time of meetings**

The place at which a meeting of the members of a company is held is:

- (a) if the meeting is held at only one physical venue (whether or not it is also held using virtual meeting technology)—that physical venue; or
- (b) if the meeting is held at more than one physical venue (whether or not it is also held using virtual meeting technology)—the main physical venue of the meeting as set out in the notice of the meeting; or
- (c) if the meeting is held using virtual meeting technology only—the registered office of the company: s249RA

#### **Notice of members' meeting**

At least 21 days written 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).

A document that relates to a meeting of the members of the company or that relates to a resolution to be considered by the members of the company or is an annual financial report or is a notice of members' rights to receive documents may be given either in physical or electronic form (section 249J). See Subrule 1.5 4) as to when a document is deemed to be received.

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 a physical meeting and , if there are two or more physical locations, the date and time for the meeting at each location, and the main location for the meeting. If virtual meeting technology is to be used there must be sufficient information in the Notice of Meeting to enable members to participate using the technology;
- 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 company; 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 credit union 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 company: 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 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.

### 11.1A Use of technology at general meetings

- a) The **company** may hold a meeting of **members**, MCI Holders (when they are entitled to vote) or both at one or more venues using any virtual meeting technology that gives the **members**, voting MCI Holders or both (as applicable) as a whole a reasonable opportunity to participate.
- b) The company may hold a meeting of members using only virtual meeting technology if approved by a board resolution.
- c) If, before or during a meeting of members, voting MCI Holders or both any technical difficulty occurs where all members, voting MCI Holders or both may not be able to participate, the Chair may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) where a quorum remains present (in the venue at which the Chair is present) and able to participate, subject to the Corporations Act, continue the meeting.
- d) In this Constitution, a reference to a person being "present" at a meeting includes participating using virtual meeting technology approved by the Directors in accordance with this Constitution.

## 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 **company** 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) 15 **members** present in person; or

- b) if less than 50 **members** are eligible to attend and vote at a **member's** meeting — 50% of the **members** eligible to attend and vote at the **member's** 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) 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.

- 4) The Standing Orders in Appendix 4 apply to the conduct of debate at **members'** meetings.

#### 11.4 Consideration of any resolution that may alter the Company's mutual structure

Appendix 7 applies to any Demutualisation Resolution (as defined in Appendix 7) to be submitted to Members.

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## Division 12. — Voting at Members' Meetings

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### 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.
- 2) Before a **member's** meeting votes on a resolution, the chair must inform the meeting:
  - a) how many proxy documents the **company** has received that validly appoint a person present at the meeting as proxy;
  - b) how many of these proxy documents direct the proxies how to vote on the resolution; and
  - c) how the proxies are directed to vote on the resolution except in the case of an election of Directors, the directions for which must remain confidential.
- 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:

- at least 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. However the company's constitution may provide that a poll cannot be demanded on

- any resolution concerning the election of the chair of a meeting; or
- the adjournment of a meeting.

- 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 body corporate **member** that appoints a representative must give the **credit union**:
  - 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 2001*, 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) If a **member** appoints the chair as the **member's** proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.
- 5) Unless the **company** 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

- 1) 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.

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## Division 13. — Directors — Appointment & Vacation of Office

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### 13.1 Number of Directors

- 1) The **board** may determine the number of **directors** provided that the number of **directors** is no less than five (5) and the majority of the **directors** are ordinarily resident in Australia.
- 2)

#### APRA Commentary

As an ADI, APRA APS 510 - Governance also applies to you. Your board composition must comply with APS 510. This Standard requires that your board must have:

- a minimum of 5 directors at all times.
- a majority of directors who are ordinarily resident in Australia, if your institution is a local ADI.

### 13.2 Eligibility to be a Director

- 1) Subject to Rule 13.5 an individual is eligible to be a **director** if the person:
  - a) in the case of a member-elected director, has been a member continuously for at least 12 months prior to the date of holding the election.
  - b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity,
  - c) is not an employee of the company,
  - d) has not been an employee of the company (other than as a director) for a period of three years preceding the next **AGM**; and
  - e) is fit and proper to be and act as a **director**.
- 2) For the purposes of Subrule 13.2(1)(e) a person is fit and proper to be and act as a **director** if the **Board Nomination Committee** has conducted an assessment of that person in accordance with the **fit and proper policy** and has determined that they are fit and proper to be and act as a **director**.

#### 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.

#### Banking Act Commentary

Under section 19 of the Banking Act it is an offence for a person to be a director of the company if the person is a disqualified person within the meaning of section 20 of the Banking Act.

### 13.3 Appointment by Members — Election

The **members** may appoint a person eligible to be a **director** under Rule 13.2(1) by an election held under the provision of Appendix 6.

### 13.4 Appointment by Board — Casual Vacancies

- 1) The **board** may appoint a person to be a **casual director**:
  - a) if a **director's** office becomes vacant other than because the **director's** term of office has ended; or
  - b) if, for any other reason, the number of **directors** is less than the minimum under Rule 13.1
- 2) The **board** may only appoint a person who is eligible to be a **director** under Subrule 13.2(1). (excluding 13.2 (1) a)
- 3) The term of office for a **casual director** appointed to fill a **casual** vacancy in paragraph (1)(a) ends:
  - a) if the **general meeting** elects to approve the appointment before the end of the next AGM after the **casual director's** appointment — at the end of the term of office of the **director** whose office has become vacant; and
  - b) otherwise — at the end of the next AGM after the **director's** appointment.
- 4) The term of office for a **casual director** appointed to fill a vacancy in paragraph (1)(b) ends at the end of the next AGM after the **director's** appointment.

### 13.5 Appointment by Board –Non-Member Appointed Directors

- 1) Subject to Subrule 13.5(3) the **board** may by resolution at any time, appoint a person as a non-member appointed **director**
- 2) The term of office of a person appointed as a **non-member appointed director** under Subrule 13.5(1) is as the **board** determines and ends no later than the end of the third AGM after the **director's** appointment
- 3) The board may only appoint as a non-member appointed director a person who is eligible to be a **director** under Subrule 13.2(1) (Excluding 13.2 (1) a)

### 13.6 Term of Office

- 1) 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.
- 2) If the number of **directors** that **members** appoint at an election is more than a third of the total number of **directors** on the **board** in Rule 13.1:
  - a) the term of office for the third of the **board** 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 **board** is due to retire at those earlier AGMs.

**Directors** with less votes retire at earlier AGMs than those with more votes.

- 3) For purposes of Subrule 13.6 (2):
  - a) if the number of **directors** on the **board** is not divisible by 3 — round fractions up to the nearest whole number in determining how many **directors** there are in a third or in two thirds of the **board**; and
  - b) if 2 or more **directors** have the same number of votes — the order of retirement amongst them is determined by lot.

#### **Corporations Act Commentary**

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

### **13.7 Automatic Vacation of Office**

- 1) The office of a **director** automatically becomes vacant if the **director**:
  - a) dies;
  - b) is absent from 3 consecutive ordinary meetings of the **board** without leave;
  - c) is 3 months in arrears in relation to money due to the **company** and has failed to make arrangements for payment satisfactory to the **company**;
  - d) ceases to be a **member**, except if they are a non-member appointed director;
  - e) has a personal representative or trustee appointed to administer the **director's** estate or property because of their mental incapacity;
  - f) is the subject of an assessment by the **Board Nomination Committee** under the **fit and proper policy** which determines that he or she does not meet the criteria and is not fit and proper to hold office as a **director**;
  - g) is the subject of a direction under section 23 of the *Banking Act 1959* (Cth);
  - h) becomes a disqualified person as defined in section 20 of the *Banking Act 1959* (Cth);
  - i) is disqualified from acting as a **director** under Part 2D.6 of the *Corporations Act*;
  - j) seriously breaches directors duties owed to the **company**;
  - k) breaches any of the **company's** rules for matters in which the **director** has a material personal interest;
  - l) makes any serious or repeated disclosure of confidential information of the **company**; and

m) makes any serious or repeated breach of the **company's** published corporate governance principles

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

### 13.8 Resignation

- 1) A **director** may resign by giving the **company** 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 **company** receives the notice of resignation.

### 13.9 Alternate Directors

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

**alternate** means a person that a **director** appoints as his or her 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 (3)

- 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;
  - b) is not a **director**; and
  - c) is not an **alternate** for another **director**.
- 3) A **director** (but not an **alternate**) may give the **company** a notice appointing a person eligible under Subrule (2) to be his or her **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 **company** 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 **company**. An alternate may exercise powers and rights that the **appointor** may exercise (other than the power to appoint an alternate) and the exercise of any such power shall be deemed to be an exercise of the power of the appointor. Except to the extent that this Rule provides otherwise, all references to **directors** in this Constitution include references to the **alternate**.
- 5) The **company** only has to give notice of **board** meetings to the **alternate** if the **appointor** has given the **company** 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** at which the **appointor** is absent. The **alternate**:
- a) may be present and may vote on a matter even though the **appointor** has a **material personal interest** in the matter; and
  - b) does not breach his or her duties to the **company** 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**.

- 7) The reference to 'all **directors**' in Rule 15.5 refers to:
- c) if the **appointor** notifies the **company** that the **alternate** can sign circulating resolutions instead of the **appointor** — the **alternate** and other **directors** but not the **appointor**;
  - d) otherwise — the **appointor** and other **directors** but not the **alternate**.
- 8) The **company** must not provide remuneration to the **alternate** (in his or her capacity as **alternate**) except out of remuneration that it has allocated to the **appointor**. The **alternate** has no right to remuneration against the **company**. This does not affect any right to remuneration that the **alternate** may have against the **appointor**.

**Note:** See Rule 17.1 in relation to remuneration of **directors**.

- 9) The **alternate's** office automatically becomes vacant if:
- a) the **appointor** revokes the **alternate's** appointment; or
  - b) 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 13.6 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 13.7 and Rule 13.8.

### 13.10 Directors' Cooperation in Implementation of Fit and Proper Policy

- 1) All **directors**, including **alternates**
- 1) agree to provide any assistance that the **company** needs to obtain information for the implementation of the **fit and proper policy** or any **prudential standard** or provision of law;
  - 2) consent to the provision of information by other persons in connection with the application to them of the **fit and proper policy** or any **prudential standard**, and waive all rights of action against any person so providing information in good faith; and
  - 3) waive all rights of action against the **company** in respect of acts or omissions done in good faith, in implementing or seeking to implement the **fit and proper policy**.

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## Division 14. — Directors' Powers

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### 14.1 Powers and Duties of the Board

- 1) The **board**:
  - a) manages the **company's** business; and
  - b) may exercise all the powers of the **company** except any powers that the *Corporations Act 2001* 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 **company**. 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 and the application of the **fit and proper policy**. The **board** may permit the delegate to sub-delegate any powers delegated to them.

#### Corporations Act Commentary

Section 198D provides a 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.

- 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 **company'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.

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## Division 15. — Directors' Meetings

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### Corporations Act Commentary

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

#### 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 one half the maximum number of **directors** under Rule 13.1 or such other number as the board determines and the quorum must be present at all times during the meeting.
- 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) 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 all of the **directors** entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

- 2) Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.
- 3) The resolution is passed when the last **director** signs.

### **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.

### **15.7 Board Remuneration Committee**

The Board must establish a Board Remuneration Committee that complies with the requirements of APRA Prudential Standard APS 510

### **15.8 Board Audit Committee**

The Board must establish a Board Audit Committee that complies with the requirements of APRA Prudential Standard APS 510

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## Division 16. — Conflicts of Interest

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### Corporations Act Commentary

Part 2D.1 and Chapter 2 E deal with directors' 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 **company's** affairs:
    - i) complies with the requirements of the *Corporations Act 2001* in relation to disclosure of the nature and extent of the interest and its relation to the **company's** 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 duties to the **company** merely because he or she 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 **company** 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 **company's** 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 **company** merely because he or she 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 **company** 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

- 1) A **director** may participate in the execution of an instrument for the **company**, 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 2001* in relation to disclosure of the nature and extent of the interest and its relation to the **company's** 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 2001*.

## Division 17. — Remuneration, Indemnity and Insurance

### 17.1 Remuneration of Directors

- 1) The board may determine directors' remuneration in accordance with the Corporations Act.

### 17.2 Travelling Expenses and Insurance

- 1) In addition to any remuneration to which a **director** may be entitled, the **company** 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 **company's** business; and
  - b) subject to the *Corporations Act 2001*, insurance premiums for a contract that insures the **director** against liabilities that the **director** incurs as an officer of the **company**.

### 17.3 Indemnities for Officers and Former Officers

#### Corporations Act Commentary

Section 199A restricts the company 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 company or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H;
- 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 company 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 **company**.

- 2) To the extent that the *Corporations Act* permits:
  - a) the **company** must indemnify an **indemnified person** against any liability that the **indemnified person** incurs in conducting the **company's** business or exercising the **company's** powers as an officer or agent of the **company**; and
  - b) the **company** 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 Subrule 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 **company**, even though a claim is made against the **indemnified person** after they have ceased to be an officer or agent of the **company**.

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## Division 18. — Administration

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### 18.1 Seal

- 1) The **board** is to provide for the safe custody of the seal.
- 2) The seal is to be used only by the authority of the **directors**.
- 3) The **board** may authorise:
  - a) 2 **directors**; or
  - b) a **director** and a **secretary**,

to witness the affixing of the seal on a document of a class specified in the resolution.

### 18.2 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 18.3, 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. The terms of appointment must be consistent with the **fit and proper policy**.

### 18.3 Resignation of Secretary

- 1) A **secretary** may resign by giving the **company** 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 **company** receives the notice of resignation.

# Appendix 1 — Objects

**A1-1** The **company** has the following objects:

- a) to raise funds from members by subscription, **deposit** or otherwise, as authorised by the *Corporations Act 2001* and *Banking Act 1959* (Cth);
- b) to apply the funds in providing **financial accommodation**, subject to the *Corporations Act 2001* and *Banking Act 1959* (Cth);
- c) to encourage savings amongst **members**;
- d) to promote co-operative enterprise;
- e) to provide programs 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 mutuals and co-operatives; and
  - ii) associations of mutuals and co-operatives,  
locally and internationally.

## **Appendix 2 — Common Bond**

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# Appendix 3 — Shares

## Division 1 — Member Shares

### A3-1 Subscription Price

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

### A3-2 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 A3-3;
  - b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A3-5; and
  - c) the right to redeem the **member shares** on the terms set out in clause A3-6.
- 2) The obligation to pay any unpaid **subscription price** on the terms set out in clause A3-7 attaches to each **member share**.
- 3) The restriction on transfer of **member shares** in clause A3-8 attaches to each member share.
- 4) The company 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 company has already issued.

**Note:** For the holder of a **member share's** entitlement to make **deposits** with, and receive **financial accommodation** from, the **company**, see Rule 2.2 and Subrule 3.1(3)

### A3-3 Voting Rights

- 1) Holders of **member shares** may participate and vote:
  - a) at a **members'** meeting;
  - b) at a meeting of the class of holders of **member shares**; and
  - c) in a ballot to appoint **directors** by election.
- 2) At a members' meeting or a meeting of the class of holders of **member shares**:
  - a) on a show of hands — each **member** other than a minor has 1 vote regardless of the number of members shares held; and
  - b) on a poll — each **member** other than a minor has 1 vote regardless of the number of **member shares** held.

A member who is a minor has no vote.

**A3-4 Dividend Entitlements**

- 1) No dividend is payable in respect of any *member share*.

**A3-5 Distribution on Winding-Up**

- 1) Subject to clause A3-14, on a winding-up of the **company** the holder of a **member share** is entitled:
  - (a) 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 **company** on an equal basis with the other holders of **member shares**
- 2) The **company** may offset the amount payable under this clause :
  - (a) any amount unpaid on the **member share**
  - (b) any amount payable by the member to the company

**A3-6 Redemption of Member Shares**

- 1) The **company** may redeem a *member share* only if the following conditions are satisfied:
  - a) either:
    - i) the *member* has given the **company** notice requesting termination of the *member's* membership of the **company** in accordance with the Rules;
    - ii) the **board** has resolved to terminate the *member's* membership of the **company** in accordance with the Rules; or
    - iii) the **board** has determined that the *member's deposit* accounts with the **company** are dormant in accordance with the Rules; and
  - b) the **company** can redeem the *member* share out of the profits of the **company**.
- 2) On redemption, the **company** 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.

**A3-7 Payment for Member Shares by Minors**

- 1) This clause applies to a **member** who was a minor when he or she became a **member**.
- 2) While a **member** remains a minor, except when the **company** is being wound up, the company must not:
  - a) call for payment of the unpaid amount in respect of the minor's **member share**;
  - b) credit any dividend if any to the unpaid amount in respect of the minor's **member share**; or
  - c) otherwise set off against the unpaid amount any amounts owing by the **company** to the minor.
- 3) After reaching the age of 18, the **member** must pay the **subscription price** for the **member share** applicable as at the time he or she became a **member**. Any time after the **member** reaches the age of 18, the **board** may:
  - a) call for payment of the unpaid amount in respect of the **member share**;
  - b) credit any dividend if any to the unpaid amount in respect of the **member share**; or
  - c) debit any of the **member's** deposit accounts with the **member's** consent.
- 4) After reaching the age of 18, the **member** may not exercise any of the rights attaching to his or her **member share** until the **member** pays the amount of the unpaid **subscription price**.

**Note:** In relation to calls, see Rule 6.1, Rule 6.2 and Rule 6.3.

**A3-8 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.

## Division 2 — Mutual Capital Instruments

For the purpose of this Division, a reference to a “Mutual Capital Instrument” or “MCI” means a share in the capital of the company which meets the requirements of a Mutual Capital Instrument as prescribed by the Corporations Act.

### A 3-9 Company is a MCI mutual entity

- (1) The company is intended to be an MCI mutual entity for the purposes of the Corporations Act.
- (2) A resolution of the company that would result in the company ceasing to be an MCI mutual entity can only take effect if:
  - (a) there are no MCIs in the company; or
  - (b) the resolution provides for each MCI to be cancelled at or before the time the company ceases to be an MCI mutual entity (whether or not the holders of the MCIs to be cancelled are to receive other securities in respect of those MCIs).

### A 3-10 Share Capital from Mutual Capital Instruments

- (1) Subject to compliance with the Corporations Act and satisfying the requirements of APRA’s prudential standards, the company may raise capital by the issue of Mutual Capital Instruments.
- (2) The Company may issue Mutual Capital Instruments on terms the Board approves but subject to the rights and restrictions contained in clauses A3-10 to A3-14.
- (3) The company may issue Mutual Capital Instruments of different classes which may be expressed to rank equally with, behind, or priority to other classes of Mutual Capital Instruments.
- (4) Each Mutual Capital Instrument must be fully paid up.
- (5) The rights attached to the Mutual Capital Instruments can be varied or cancelled only by special resolution of the company and either:
  - (a) by special resolution passed at a meeting of the class of members holding shares in the same class; or
  - (b) with the written consent of members with at least 75% of the votes in the class.

### A3-11. Rights and Restrictions Attaching to Mutual Capital Instruments

The following rights attach to each Mutual Capital Instrument:

- (a) the right to vote on the terms set out in clause A3-12;
- (b) the right to participate in dividends on the terms set out in clause A3-13; and
- (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A3-14.

### A3-12. Voting Rights

Except as required by law, Mutual Capital Instruments carry no voting rights.

### A3-13. Dividend Entitlements

- (1) Each Mutual Capital Instrument carries a right to participate in dividends as specified in its terms of issue. No approval by Members is required with respect to dividend entitlements on Mutual Capital Instruments, including the amount, timing and method of calculating dividend payments.

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- (2) Dividends on the Mutual Capital Instruments are non-cumulative.
  - (3) Each Mutual Capital Instrument confers a right to receive dividends in priority to dividends (if any) which may become payable on member shares.
  - (4) Each Mutual Capital Instrument confers a right to receive a dividend payable if and when determined by the directors in their discretion but limited to the amount permitted by the APRA Prudential Standards, ranking for payment as provided in the terms of issue of the Mutual Capital Instrument.
  - (5) Each Mutual Capital Instrument may be entitled to payment of dividends equally with or behind any other share, the terms of whose issue specify a ranking equally with, or in priority to, the Mutual Capital Instrument.

**A3-14. Distribution on Winding-Up**

- (1) On a winding-up of the Company each holder of a Mutual Capital Instrument is entitled to payment of the amount of capital paid up on the Mutual Capital Instrument equally with every other Mutual Capital Instrument and is not otherwise entitled to share in any surplus assets of the Company.
- (2) Mutual Capital Instrument rank behind Member Shares for repayment of capital on a winding-up.
- (3) Mutual Capital Instruments may rank equally with or behind any other shares the terms of whose issue specify a ranking equally with, or in priority to, the Mutual Capital Instruments.

## Appendix 4 — Standing Orders

### A4-1 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.

### A4-2 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.

### A4-3 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.

### A4-4 Motions to be in Writing

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

### A4-5 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 5 — Board Nomination Committee

## A5-1 Establishment of Board Nomination Committee

- 1) The **board** must establish a **Board Nomination Committee** comprised of:
  - a) 1 director; and
  - b) at least 2 other persons who are not **directors** and are independent of the **company**
- 2) The board must appoint to the Board Nomination Committee:
  - a) an independent chairperson; and
  - b) persons with suitable experience.
- 3) Employees of the **company** are not eligible to be appointed to the **Board Nomination Committee**.
- 4) Each person on the **Board Nomination Committee** must enter into an agreement with the **credit union** to keep confidential their assessments under Rule A5-2, during and after their appointment.
- 5) A director appointed to the **Board Nomination Committee** must not take part in an assessment under Rule A5-2 if the **director** is the subject of the assessment

## A5-2 Role of the Committee

- 1) The **Board Nomination Committee** must assess:
  - a) all directors:
    - i) who hold office at 1 October 2006;
    - ii) annually;
    - iii) with respect to whom the **Board Nomination Committee** has received information material to an assessment of that **director's** fitness and propriety;
  - b) any person who is nominated as a **candidate** prior to their appointment or election as **director** under Rule 13.3;
  - c) any person prior to their appointment as a **director** by the **board** under Rules 13.4 and 13.5;
  - d) any secretary:
    - i) who holds office at 1 October 2006;
    - ii) annually;
    - iii) with respect to whom the **Board Nomination Committee** has received information

material to an assessment of that **secretary's** fitness and propriety;

e) any person prior to their appointment as a **secretary** by the **board** under Rule 18.2;

as to their fitness and propriety to be and act as a **director** by reference to the **fit and proper policy**.

### **A5-3 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.

### **A5-4 Termination**

- 1) The **board**, may at any time and in its absolute discretion:
  - a) suspend or terminate the appointment of a person as a member of the **Board Nomination Committee**; and
  - b) may at any time and in its absolute discretion give directions to the **Board Nomination Committee** as to the procedures it is to follow.

# Appendix 6 — Election of Directors

## Ballot at AGM

### A6-1 Election

- 1) An election of **directors** is held by secret ballot to which the provisions of this Division apply.
- 2) The following table sets out the timetable for election of **directors** by **members**:

Steps in Election Procedure	Time
Call for nominations (see clause <b>A6-2(1)</b> )	84 days before AGM
Nominations close (see clause <b>A6-2(2)</b> )	63 days before AGM
Notice of the Annual General Meeting	21 days before AGM
Conduct of ballot and announcement of <b>directors</b> (see clause <b>A6-9(3)</b> )	AGM

### A6-2 Nominations

- 1) The **board** must give **members** a notice calling for **members** to nominate **candidates** not less than 84 days before the AGM. The board may give this notice, in addition to any of the methods allowed in Subrule 1.5, by advertisement:
  - a) at the company's offices; or
  - b) in newspapers.
- 2) Nominations close 63 days before the AGM.
- 3) 2 **members** together have the right to nominate a **candidate**. To nominate a **candidate**, the 2 **members** must give the **company** a notice of nomination before nominations close. The notice of nomination must:
  - a) declare that the **candidate** is eligible to be a **director** under Rule 13.2(1);
  - b) state the **candidate's** age; and
  - c) be signed by the nominating **members** and the **candidate**.

- 4) A **director** who retires in accordance with Rule 13.6 may stand for re-election without nomination (and then will be a **candidate**) provided the **director** is eligible for election under Subrule 13.2(1)
- 5) A **candidate** must give the **company** or the **Board Nomination Committee** all information and consents the **company** or **Board Nomination Committee** reasonably requests to determine if the **candidate** is disqualified by law from acting as a **director**.
- 6) A **candidate** must give the **company** or the **Board Nomination Committee** all information and documentation the **company** or **Board Nomination Committee** reasonably requests to assess if the **candidate** is fit and proper to be a **director** of the **company** by reference to the **fit and proper policy**.
- 7) If a **candidate** does not give to the **company** or the **Board Nomination Committee** all of the information referred to in Subrules (5) and (6) at least 42 days before the AGM the **candidate** immediately withdraws their candidature for the election as a **director** unless the **company** or the **Board Nomination Committee** agrees to extend the time for receiving the information
- 8) Each **candidate** must, if required by the **company** or the **Board Nomination Committee**, submit to an interview by the **company** or **Board Nomination Committee**. The interview can be conducted in such manner as the **company** or **Board Nomination Committee** determines.
- 9) If the **Board Nomination Committee** determines that a **candidate** does not meet the criteria for a person to hold the position of **director** with the **company** by reference to the **fit and proper policy** that **candidate** immediately ceases to be a **candidate**.

#### A6-3 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 **company** 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.

#### A6-4 Appointment of Returning Officers

- 1) The **board** must appoint a returning officer, who may appoint assistant returning officers, none of whom can be a director of the **company** or a person who intends to accept a nomination for the office of director.
- 2) The **secretary** must prepare and give the returning officer a roll of **members**.

**A6-5 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.

**A6-6 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**.
- 4) On issuing each ballot paper, the returning officer must mark the member's name off the roll of **members**.

**A6-7 Conduct of Ballot**

- 1) The returning officer must conduct the ballot at the AGM
- 2) The returning officer must provide secured ballot boxes. The ballot boxes must remain secured until the closure of the ballot.

**A6-8 Closure of the Ballot**

The ballot closes at the time the returning officer specifies.

**A6-9 Procedures After Close of the Ballot**

- 1) As soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
  - a) supervise the scrutinising of the ballot papers and reject informal ballot papers;
  - b) count the votes;
  - c) 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
  - d) deliver the declaration to the **secretary**.

- 2) A ballot paper is informal if:
  - a) it is not authenticated by the returning officer; or
  - b) it has no vote indicated on it or it does not indicate the **member's** preference for a **candidate**.
- 3) The **secretary** must announce the results of the ballot at the AGM.
- 4) If a **member** gives the **company** a written request, the **company** must make available to any **member** a copy of the returning officer's declaration of the ballot.
- 5) The returning officer must destroy the ballot papers three months after the declaration of the ballot.

#### **A6-10 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.

#### **A6-11 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 **secretary's** notifying **members** of the result of the ballot.
- 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.

# Appendix 7 — Mutuality Protection

## 1. Application of Appendix 7

Notwithstanding any provision contained in this Constitution to the contrary, this Appendix will apply if a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered.

For the purpose of this Appendix:

'Demutualisation Resolution' means a proposed resolution, or combination of proposed resolutions:

- (a) which, if passed, will or may result in the credit union (whether acting through its board, its members or otherwise) conducting 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:
  - (i) the successor to the credit union's business is not a mutual entity; or
  - (ii) a person who is not a mutual entity, or a group of persons any of whom is not a mutual entity, holds more than 90% of the shares in the credit union; or
  - (iii) the Company ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "mutual bank" without committing an offence under the *Banking Act 1959*; or
  - (iv) a voluntary transfer of the Company's business, pursuant to the *Financial Sector (Transfer and Restructure) Act 1999*, to an Entity that is not an authorised deposit taking institution that can or could assume or use the expressions "Credit Union" or "Credit Society" without committing an offence under the *Banking Act 1959*; or
  - (v) Member Shares becoming transferable or capable of sale or assignment; or
  - (vi) a Member becoming entitled to more than one vote at a general meeting of the company for each capacity in which the person is a member of the company; or
- (b) in relation to which the consent of the Treasurer is required pursuant to either section 63 of the *Banking Act 1959* or section 11 of the *Financial Sector (Shareholdings) Act 1998*, unless the consent is required for the purposes of a voluntary transfer of the Company's business, pursuant to the *Financial Sector (Transfer and Restructure) Act 1999*, to an Entity that is an authorised deposit taking institution that can or could assume or use the expressions "Credit Union", "Credit Society" or "mutual bank" without committing an offence under the *Banking Act 1959*; or

- (c) the effect of which would be to modify or repeal any clause in this Appendix; or
- (d) the effect of which would be to modify or repeal the Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Appendix.

This Appendix does not apply in respect of the creation or issuance of, or the agreement to create or issue, or any amendment to this Constitution to facilitate the creation or issuance of, MCIs (including MCIs of different classes and with different rights) and the cancellation or variation of any rights attached to MCIs (or a class of MCIs).

## 2. Interpretation

In this Appendix, unless the contrary intention appears:

**'Additional Information'** means:

- (a) an explanation as to how the Demutualisation Resolution will affect Member rights as a holder of Shares and as a customer of the Company;
- (b) an explanation as to the effect of the Demutualisation Resolution on the Company and Members with respect to:
  - (i) the rights of Members to vote and to participate in the distribution of profits and reserves of the Company and the loss of any such rights; and
  - (ii) the effect on the business, operations, employees, products, services, pricing and distribution network of the Company;
- (c) an explanation of the mutuality benefits to Members that will be lost if the Demutualisation Resolution is passed; and
- (d) an explanation of the availability and effect of other alternatives to Demutualisation Resolution.
- (e)

**'Directors' Statement'** means a statement by the Directors containing:

- (a) the recommendation of each Director as to whether the Demutualisation Resolution should be passed and their reasons for making that recommendation;
- (b) details of any benefit to be received by the Directors if the Demutualisation Resolution is passed.

**'Entity'** includes any:

- (a) incorporated or unincorporated bodies;
- (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.

**'Information'** means:

- (a) a disclosure statement that:
  - (i) contains all the information that Members would reasonably require and expect to be given to make an informed decision about the Demutualisation Resolution, including but not limited to the Additional Information;
  - (ii) states that the Demutualisation Resolution may alter the Company's mutual structure and outlines the intentions of the Member or Entity seeking to convene or convening a meeting of the Company:
    - (I) in relation to the future of the Company if the Demutualisation Resolution is passed;
    - (II) in relation to Members' interests if the Demutualisation Resolution is passed;
    - (III) in relation to the Directors if the Demutualisation Resolution is passed; and
  - (iii) explains the effect the passing of the Demutualisation Resolution is likely to have on the business, operations, employees, products, services, pricing and distribution network of the Company;
- (b) an estimate of the financial benefits (if any) the Members, the Directors and/or other officers of the Company will be offered if the Demutualisation Resolution is passed;
- (c) a report by an expert that:
  - (i) states whether, in the expert's opinion:
    - (I) the Demutualisation Resolution is in the best interests of the Members of the Company as a whole;
    - (II) whether the Demutualisation Resolution is fair and reasonable to Members having regard to any change of voting rights and the right to participate in profits and reserves; and
  - (ii) sets out the expert's opinions in relation to the Additional Information; and
  - (iii) gives the expert's reasons for forming those opinions; and
  - (iv) complies with the requirements of clause 33 of Schedule 4 of the Corporations Act;
  - (v) contains any additional information required to be provided under the Corporations Act.

**'Qualifying Member'** means:

- (a) a Member who has been admitted to membership of the Company under this Constitution on the date that this Appendix takes effect under the Corporations Act; or
- (b) a Member admitted to membership of the Company under this Constitution after the date on which this Appendix 7 takes effect under the Corporations Act who has been a Member for not less than 12 months.

**'Special Resolution'** means a resolution:

- (a) in relation to which notice as set out in paragraph 249L(1)(c) of the Corporations Act has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

### **3. Demutualisation Resolution Approval Procedure: Requirement for General Meeting**

If a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered:

- (a) A general meeting must be convened and conducted in accordance with this Constitution to consider the Demutualisation Resolution as a Special Resolution;
- (b) The information required by clause 4 of this Appendix must be provided to Members in convening the general meeting to consider the Demutualisation Resolution;
- (c) The Demutualisation Resolution may not be moved at the general meeting, or passed at the general meeting, if the Demutualisation Resolution, or a substantially similar Demutualisation Resolution, was moved at a general meeting held within the 3 years prior to the general meeting and not passed;
- (d) The Demutualisation Resolution shall only be passed at the general meeting if at least 75% of the votes cast by Members entitled to vote on the Demutualisation Resolution approve the Demutualisation Resolution;

- (e) The Demutualisation Resolution, if passed at the general meeting, shall not have any effect unless:
  - (i) the Company has received votes from 15% of Qualifying Members; and
  - (ii) of the votes received from Qualifying Members, at least 75% of the votes are in favour of approving the adoption of the Demutualisation Resolution.

#### **4. Disclosure Requirements**

4.1 If a meeting of the Company at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with section 249D of the Corporations Act:

- (a) the Member or Members requesting the convening of the meeting shall at the time of requesting the convening of the meeting provide the Information to the Company; and
- (b) the Company shall at the time of convening the meeting provide the Members with:
  - (i) notice of the Demutualisation Resolution and of the intention to consider the Demutualisation Resolution as a special resolution in accordance with section 249L(1)(c) of the Corporations Act;
  - (ii) the Information supplied to the Company;
  - (iii) the Directors' Statement; and
  - (iv) such further information, if any, as the Directors consider appropriate.

4.2 If a meeting of the Company at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with Sections 249E or 249F, the Member or Members requesting the convening of the meeting shall at the time of convening the meeting provide the Information to the Members.