

ACN 087 650 806

# CONSTITUTION

101 Molesworth Street  
LISMORE NSW 2480

Tel: (02) 6620 7000  
Fax: (02) 6622 6433

Email: [info@summerland.com.au](mailto:info@summerland.com.au)

**Effective [Date]**

Version: November 2023

# TABLE OF CONTENTS

<b>PREAMBLE .....</b>	<b>V</b>
<b>CONSTITUTION.....</b>	<b>1</b>
<b>DIVISION 1. — INTRODUCTORY MATTERS.....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Interpretation .....	2
1.3 Time.....	3
1.4 Replaceable Rules do not Apply.....	3
1.5 Notices.....	3
<b>DIVISION 2. — OBJECTS &amp; LIMIT ON POWERS.....</b>	<b>5</b>
2.1 Objects .....	5
2.2 Customers Must be Members.....	5
<b>DIVISION 3. — ADMISSION AS A MEMBER OR MCI HOLDER .....</b>	<b>6</b>
3.1 Admission as a member or MCI holder .....	6
3.2 Minors.....	6
3.3 Joint Members .....	7
<b>DIVISION 4. — TERMINATION OF MEMBERSHIP.....</b>	<b>8</b>
4.1 Removal of the Name of Member or MCI Holder from the Register of Members .....	8
4.2 Member's Request for Termination .....	8
4.3 Termination as a result of Member's Conduct.....	9
4.4 Termination When Accounts Dormant.....	9
<b>DIVISION 5. — ISSUE OF SHARES .....</b>	<b>10</b>
5.1 Classes of Shares .....	10
5.2 Board Power to Issue Shares .....	10
5.3 Restrictions on Issue of Member Shares.....	10
5.4 Issue of MCIs.....	10
<b>DIVISION 6. — SHARES.....</b>	<b>11</b>
6.1 Class of Shares and Subscription Price .....	11
6.2 Rights, Obligations and Restrictions Attaching to Member Shares .....	11
6.3 Voting Rights .....	11
6.4 Dividend Entitlements.....	11
6.5 Distribution on Winding-Up.....	12
6.6 Redemption of Member Shares.....	12
6.7 Payment for Member Shares by Minors .....	12
6.8 Transfer of Member Shares.....	12
6.9 Company is a MCI mutual entity.....	13
6.10 Share Capital from Mutual Capital Instruments .....	13
6.11 Rights Attaching to Mutual Capital Instruments.....	13
6.12 Voting Rights .....	13
6.13 Dividend Entitlements.....	13
6.14 Distribution on Winding-Up.....	14
6.15 Form of Transfer.....	14
6.16 Ownership of Transfer .....	14
6.17 Registration of Transfer .....	14
6.18 Powers of Attorney .....	15
6.19 Suspension of Registration.....	15
<b>DIVISION 7. — TRANSMISSION OF SHARES .....</b>	<b>16</b>

7.1	Transmission of Shares on Death .....	16
7.2	Transmission of Shares on Bankruptcy .....	16
7.3	Transmission of Shares on Mental Incapacity .....	16
<b>DIVISION 8. — HOLDING GENERAL MEETINGS .....</b>		<b>17</b>
8.1	Calling a General Meeting .....	17
8.2	Use of technology at general meetings .....	17
8.3	Adjourning a General Meeting .....	17
8.4	Proceedings at General Meetings .....	18
8.5	Consideration of any resolution that may alter the Company's mutual structure .....	18
<b>DIVISION 9. — VOTING AT GENERAL MEETINGS .....</b>		<b>19</b>
9.1	Voting .....	19
9.2	Voting on a Show of Hands .....	19
9.3	Voting on a Poll .....	19
9.4	Body Corporate Representatives .....	19
9.5	Proxies .....	20
9.6	Objections .....	20
9.7	Voting in Different Capacities .....	20
<b>DIVISION 10. — DIRECTORS - APPOINTMENT &amp; VACATION OF OFFICE .....</b>		<b>21</b>
10.1	Number of Directors .....	21
10.2	Eligibility to be a Director .....	21
10.3	Appointment by Members — Election .....	21
10.4	Appointment by Board — Casual Vacancies .....	21
10.5	Appointment by Board Generally .....	21
10.6	Term of Office .....	22
10.7	Automatic Vacation of Office .....	22
10.8	Resignation .....	23
10.9	Alternate Directors .....	23
<b>DIVISION 11. — DIRECTORS' POWERS .....</b>		<b>25</b>
11.1	Powers and Duties of the Board .....	25
11.2	Negotiable Instruments .....	25
11.3	Delegation by the Board .....	25
<b>DIVISION 12. — BOARD MEETINGS .....</b>		<b>26</b>
12.1	Calling and Conduct of Board Meetings .....	26
12.2	Quorum of Board .....	26
12.3	Chair of Board .....	26
12.4	Passing of Board Resolutions .....	26
12.5	Circulating Resolutions .....	26
12.6	Committees of the Board .....	27
<b>DIVISION 13. — CONFLICTS OF INTEREST .....</b>		<b>28</b>
13.1	Director Not in Breach if Acts in Matters Relating to Director's Interests .....	28
13.2	Director Not in Breach if Does Not Act in Matters Relating to Director's Interests .....	28
13.3	Execution of Instruments .....	28
<b>DIVISION 14. — REMUNERATION, INDEMNITY AND INSURANCE .....</b>		<b>29</b>
14.1	Remuneration of Directors .....	29
14.2	Travelling Expenses and Insurance .....	29
14.3	Indemnities for Officers and Former Officers .....	29
<b>DIVISION 15. — ADMINISTRATION .....</b>		<b>30</b>
15.1	Seal .....	30
15.2	Secretary .....	30

15.3	Resignation of Secretary .....	30
------	--------------------------------	----

## **APPENDIX 1 - STANDING ORDERS.....31**

A1-1	Time Limits for Speakers.....	31
A1-2	Amendment.....	31
A1-3	Speakers.....	31
A1-4	Motions to be in Writing.....	31
A1-5	Closure of Debate .....	31

## **APPENDIX 2 - ELECTION OF DIRECTORS.....32**

### **BALLOT AT AGM ..... 32**

A2-1	Election .....	32
A2-2	Nominations .....	32
A2-3	Proceeding with Election.....	33
A2-4	Appointment of Returning Officers .....	33
A2-6	Ballot Papers.....	34
A2-7	Conduct of Ballot.....	34
A2-8	Closure of the Ballot.....	34
A2-9	Procedures After Close of the Ballot .....	34
A2-10	Voting System.....	35
A2-11	Irregularity in the Conduct of an Election .....	35

## **APPENDIX 3 - MUTUALITY PROTECTION.....36**

A3-1.	Application of Appendix 3.....	36
A3-2.	Interpretation .....	37
A3-3.	Demutualisation Resolution Approval Procedure: Requirement for General Meeting.....	39
A3-4.	Disclosure Requirements .....	39

# Preamble

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

## Principles of Mutuality

### Customers Must be Members

1. Subject to the exceptions in Principles 2 and 3, a mutual entity (as defined in the Corporations Act) 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 entity 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 entity's shares.
3. A mutual entity may accept deposits from, or grant financial accommodation to, another ADI or 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 entity may issue a person*

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

#### *Consideration paid for membership shares*

7. A mutual entity may issue member shares as wholly paid or partly paid or nil paid.
8. A mutual entity may only issue a member share to a person in return for valuable consideration.
9. The person must provide consideration in cash or, in relation to 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 one vote, and only one vote, at meetings of the mutual entity's members.

#### *Dividends and Surplus*

11. A member share may confer a right to participate in the mutual entity's profits through payment of dividends.
12. Subject to Appendix 3 (Mutuality Protection), a member share must confer a right to participate in surplus when the mutual entity is wound up.

Any participation in profit or surplus must be on equitable terms.

#### *Redemption and Transfer*

13. 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 entity's constitution.
14. Subject to the exceptions in Principle 16, a member share may not be transferred.
15. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association to another trustee for the unincorporated association.

### **Additional Shares**

#### *Definition*

16. All shares issued by a mutual entity other than member shares and MCIs (defined below) are additional shares.

#### *Voting*

17. Subject to the exceptions in Principle 19, an additional share must not confer the right to vote.  
18. 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 entity.

#### *Dividends and Surplus*

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

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

### **Mutual capital instruments (MCIs)**

#### *MCI mutual entity*

23. The company is intended to be a MCI mutual entity (as defined in the Corporations Act).

#### *Voting*

24. Subject to the constitution and the Corporations Act, MCIs may confer such rights to vote at meetings of the mutual entity's members and voting MCI holders as are provided for in their terms of issue.  
25. If a member is also a MCI holder, the member has no more than one vote at meetings of the mutual entity's members and voting MCI holders, regardless of the applicable terms of issue of the MCI.

#### *Dividends and Surplus*

26. A MCI may confer:  
    (a) the right to participate in the mutual entity's profits through payment of dividends; and  
    (b) a right to participate in surplus when the mutual entity is wound up,  
        but only to the extent permitted by the constitution, the Corporations Act, the prudential standards and the terms of issue of the MCIs.

### **Accumulation of Securities**

27. Accumulation of securities issued by a mutual entity 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 entity.

### **Directors**

28. Only a member of a mutual entity may be a member elected director of the mutual entity.

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.

**Banking Act** means the *Banking Act 1959* (Cth).

**board** means the board of **directors** for the time being of the **company** or those of them who are present at a meeting at which there is a quorum.

**board appointed director** means a **director** appointed by the **board** under Rule 10.5.

**candidate** means the eligible person nominated to be a candidate for election as a **director** in accordance with clause A2 -2(3) 'Nominations' of Appendix 2.

**Company** or **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 deposited sum 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** from time to time 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** and any **voting MCI holders**.

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

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

**member** means a person who is the holder of a **member share** and whose name the **company** has entered for the time being in the **Register of Members**.

**member elected director** means:

- (a) a **director** for the time being of the **company** elected (or declared elected) by members under Rule 10.3; and
- (b) a **director** for the time being appointed by the **board** under Rule 10.4 to fill a vacancy of a **director** elected by members under Rule 10.3.

**member share** means a share as described in Part 1 of Division 6 (excluding, for the avoidance of doubt, an **MCI**).

**Mutual Capital Instrument** or **MCI** means a share in the capital of the **company** as described in Part 2 of Division 6 which meets the requirements of a 'Mutual Capital Instrument' as prescribed by the **Corporations Act**.

**prudential standard** means:

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

**Register of Members** means the register of members and **MCI holders** the **company** keeps under the **Corporations Act**.

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

**share** means each of a **member share** and a **MCI**.

**subscription price** means:

- (a) in relation to a **member share**, the amount, if any, payable by a person on subscription for a **member share**; and
- (b) in relation to a **MCI**, the amount payable by a person on subscription for a **MCI** or, if the **MCI** was created on conversion of a capital instrument in accordance with prudential standards, the nominal dollar value of that capital instrument prior to conversion into the **MCI**.

**voting MCI holder** means a **MCI holder** who has one vote at a **general meeting** because the **MCI holder** has been granted one vote under the terms of issue of the **MCI** held.

## 1.2 Interpretation

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, regulation or **prudential standard** includes all amendments, consolidations or replacements of the statute, regulation or **prudential standard**;
- (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument;



- (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 the English language in tangible and permanently visible form and includes without limitation emails, faxes and documents in electronic form;
- (i) a reference to "this Constitution" in an Appendix includes a reference to the appendices to this Constitution;
- (j) a reference to an "Appendix" means an appendix to this Constitution and includes all amendments or replacements of the appendix; and
- (k) a reference to a "rule", "subrule", "clause", "subclause" or "paragraph" means a rule, subrule, clause, subclause or paragraph (as the case may be) of this Constitution.

### 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 Daylight Saving 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** 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.
- 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 to the **company** must do so in writing and must address it to the **company** at its registered office or such other address that may be electronic or otherwise as the **company** specifies to members and **MCI holders** from time-to-time;
- 4) The **company** may give a notice or other document to a **member** or **MCI holder**:
  - (a) by sending it by pre-paid post to the **member's** or **MCI holder's** address appearing on the **Register of Members**;
  - (b) by sending it to such other address that may be electronic or otherwise as the **member** or **MCI holder** specifies to the **company** from time-to-time;
  - (c) by making the notice available by electronic means and notifying the **member** or **MCI holder** in accordance with Rule 1.5(4)(a) or 1.5(4)(b) that the notice is available and how the **member** or **MCI holder** may access the notice.

**Note:** Subrule 3.3(2) deals with sending notices to joint members.

- 5) A notice given in any of the ways set out in column 2 of the table is taken to be received by the person at the time set out in column 3:

<b>Delivery Method</b>		<b>Time Person Receives Notice</b>
<b>1</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>2</b>	<b>Sending the notice by electronic means</b>	<p>The other person receives the notice:</p> <ul style="list-style-type: none"> <li>(i) if sent before 5:00pm on a <b>business day</b> — on that <b>business day</b></li> <li>(ii) if sent after 5:00pm on a <b>business day</b> — on the next <b>business day</b></li> <li>(iii) if sent on a day other than a <b>business day</b> — on the next <b>business day</b></li> </ul> <p>This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address</p>
<b>3</b>	<b>Making the notice available in accordance with Clause 1.5(4)(c)</b>	The other person receives the notice on the <b>business day</b> after the day on which the person is notified that the notice is available.

- 6) If a person sends a **member** or **MCI holder** a notice in accordance with this Rule, any person to whom the **share** of that **member or MCI holder's share has been** transmitted as a consequence of the death, bankruptcy or mental incapacity of such **member** or **MCI holder** is taken to have received the notice when the **member** or **MCI holder** would, but for death, bankruptcy or mental incapacity, have received the notice. This Rule does not apply if the person to whom the **share** has been transmitted has advised the **company** of an alternative address, in which case the notice must be sent to that address.

---

## Division 2. — Objects & Limit on Powers

---

### 2.1 Objects

- 1) The **company** is a public company limited by shares organised as a mutual entity.
- 2) The **company** is intended to be an 'MCI mutual entity' for the purposes of the **Corporations Act**.
- 3) The **company** has the following objects:
  - (a) to raise funds from members by subscription, **deposit** or otherwise, as authorised by the **Corporations Act** and **Banking Act**;
  - (b) to apply the funds in providing **financial accommodation** to **members**, subject to the **Corporations Act** and **Banking Act**;
  - (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 whilst having an overall positive impact on society and the environment;
  - (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.

### 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, **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.

---

## Division 3. — Admission as a member or MCI holder

---

### 3.1 Admission as a member or MCI holder

- 1) Subject to any other Rule allowing admission of **members**, the **company** may admit a person as a **member** only if the person applies for membership and a **member share** in the form required by the **company** and the person agrees to pay or pays in cleared funds the **subscription price**, if any, up to the amount required by the **board**.

**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 Rule 7.1, Rule 7.2 or Rule 7.3.

- 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** or **MCI holder** without any obligation to give a reason for not admitting a person as a **member** or **MCI holder**.
- 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**; and
  - (c) give the person notice that it has admitted the person as a **member**.
- 4) Subject to any other Rule in respect of admission of members, a person becomes a **member** upon that person's name being entered in the **Register of Members**.
- 5) The **company** may admit a person as a **MCI holder** only if:
  - (a) the person makes a written application in a form the **company** requires;
  - (b) the person applies for a **MCI**; and
  - (c) the person pays in cleared funds the subscription price, if any, up to the amount required by the **board**.
- 6) When the **company** admits a person as a **MCI holder**, the **company** must:
  - (a) issue the **MCI** to the person;
  - (b) enter the person's particulars in the **Register of Members** as required by the **Corporations Act**; and
  - (c) give the person notice that it has admitted the person as a **MCI holder**.
- 7) Unless expressly stated otherwise in this Constitution:
  - (a) a **MCI holder** is not a **member** merely by virtue of holding an **MCI**;
  - (b) a **MCI holder** will also be a **member** if they hold a **member share**; and
  - (c) a **MCI holder**, who is also a **member**, is not deemed to be a **member** (and the provisions of this Constitution relating to membership do not apply) in respect of any **MCIs** held by that person.

### 3.2 Minors

- 1) The **company** may approve an application for membership by a minor, being any person who is not yet eighteen years old.
- 2) A **member** who is a minor is not entitled to:

- (a) hold office as an officer of the **company**; or
- (b) vote on any matter at a **general meeting** unless determined otherwise by the **board**.

### 3.3 Joint Members

- 1) When the **company** approves an application from 2 or more persons to become members on the basis that the persons will hold a **deposit** or receive **financial accommodation** jointly, each person will be admitted as an individual **member**. For the avoidance of doubt, no person will be admitted as a joint **member** of the company.
- 2) If the **company** has previously admitted 2 or more persons as a joint **member** of the **company** the following rules apply:
  - (a) 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**.
  - (b) 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**.
  - (c) 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.
  - (d) 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**.
  - (e) The **company** may accept **deposits** from, or provide **financial accommodation** to, the joint **member** or to any person constituting the joint **member**.
  - (f) 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**.
  - (g) In this Constitution, the joint **member** is taken to be a person separate to the persons constituting the joint **member**.

## Division 4. — Termination of Membership

### 4.1 Removal of the Name of Member or MCI Holder 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** in accordance with the **Corporations Act**;
  - (c) the **member** surrenders the **member's member share** in accordance with the **Corporations Act**;
  - (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 7.2, 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 7.3;
  - (e) if the **member** is a body corporate — the **member** is deregistered or dissolved;
  - (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; or
- 2) The **company** can remove the **MCI holder's** name from the Register if the **MCI** held by a **MCI holder** is redeemed, transferred or cancelled in accordance with the terms of that **MCI**, this Constitution and the **Corporations Act**.

**Note:** Rule 2.2(1) 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** and discharging all other obligations to the **company**.
- 2) If a **member** makes a request under Subrule (1), the **company** must redeem the **member's member share** for the paid **subscription price** 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 as a result of Member's Conduct

- 1) The **company** may terminate a **member's** membership by redeeming the **member's member share** for the paid **subscription price**, 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 **company** reasonably considers to be detrimental to the **company**; or
  - (c) the **company** reasonably considers the **member** obtained 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 When 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 or the treatment of accounts as dormant would be inconsistent with any other legislation.
- 2) Subject to Subrule (3), the **company** may:
  - (a) determine that the **member's deposit** accounts are dormant; and
  - (b) redeem the **member's member share** for the paid subscription price,

if the **member** has not initiated any transactions in relation to any **deposit** account in the 24 month period before the date of the determination, provided always that if the **member** is a minor the 24 month period may commence no earlier than the day after the **member's** eighteenth birthday.
- 3) The **company** must send notice of the proposed determination 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 taking the proposed action. The notice must state that unless the **member** gives to the **company** a written notice within one month that the **member** wishes the account to remain open, the **company** intends to declare the account dormant, close the account, redeem the **member's member share** and transfer the amount payable on redemption of the **share** (if any) and the amount (if any) standing to the credit of the member's **deposit** account into a general account maintained by the **company** for the purposes of holding dormant account monies and/or redemption proceeds for affected members.
- 4) 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 price**.

---

## Division 5. — Issue of Shares

---

### 5.1 Classes of Shares

Subject to this Constitution and the *Corporations Act*, the *company* may only issue *member shares* and *Mutual Capital Instruments*.

### 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 one *member share* to any person. However, the *company* may issue to a trustee for an unincorporated association:
  - (a) one *member share* to the trustee in the trustee's own right; and
  - (b) one *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*.

### 5.4 Issue of MCIs

*MCIs* may be issued and may be cancelled in accordance with the procedures set out in Part 2 of Division 6, and have the rights described in Part 2 of Division 6.



## Division 6. — Shares

### Part 1 – Member Shares

#### 6.1 Class of Shares and Subscription Price

Each **member share** is a redeemable preference share for the purposes of clause 15(2), Schedule 4 of the **Corporations Act**.

#### 6.2 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 Rule 6.3;
  - (b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in **Error! Reference source not found.**; and
  - (c) the right to redeem the **member shares** on the terms set out in Rule 6.6.
- 2) The obligation to pay any unpaid **subscription price** on the terms set out in Rule 6.7 attaches to each **member share**.
- 3) The restriction on transfer of **member shares** in Rule 6.8 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(1)

#### 6.3 Voting Rights

- 1) Holders of **member shares** may participate and vote:
  - (a) at a **general meeting**;
  - (b) at a meeting of the class of holders of **member shares**; and
  - (c) in a ballot to appoint **directors** by election or a ballot conducted pursuant to Section 3 of Appendix 3 (Mutuality Protection).
- 2) At a **general 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 one vote regardless of the number of **member shares** held; and
  - (b) on a poll — each **member** other than a minor has one vote regardless of the number of **member shares** held.

A **member** has no vote if (i) the **member** is a minor, or (ii) the **member** was a minor when the **member share** was issued, has reached the age of 18 and has not paid the amount of the unpaid **subscription price** of such **member share**.

#### 6.4 Dividend Entitlements

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

## 6.5 Distribution on Winding-Up

- 1) Subject to Rule 6.14, on a winding-up of the **company** the holder of a **member share** is entitled:
  - (a) to payment of the **subscription price** 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**; and
  - (b) any other amount payable by the **member** to the **company**.

## 6.6 Redemption of Member Shares

A **member share** may be, or will be, redeemed as described in Division 4.

## 6.7 Payment for Member Shares by Minors

- 1) This clause applies to a **member** who was a minor when they 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 **subscription price** in respect of the minor's **member share**; or
  - (b) otherwise set off against the unpaid **subscription price** any amounts owing by the **company** to the minor.

After reaching the age of 18 and to the extent not already paid, the **member** must pay the **subscription price** for the **member share** applicable as at the time they became a **member**.

- 3) After reaching the age of 18, the **member** may not exercise any of the rights attaching to their **member share** until the **member** pays the amount of the unpaid **subscription price**.

## 6.8 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.

## Part 2 — Mutual Capital Instruments

### 6.9 Company is a MCI mutual entity

- 1) The **company** is intended to be a 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 a 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 a MCI mutual entity (whether or not the **MCI holders** are to receive other securities in respect of those **MCIs**).

### 6.10 Share Capital from Mutual Capital Instruments

- 1) Subject to compliance with the **Corporations Act** and satisfying the requirements of the **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 Rules 6.10 to 6.14.
- 3) The **company** may issue **Mutual Capital Instruments** of different classes which may be expressed to rank equally with, behind, or in 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 **MCI holders** holding **MCIs** in the same class; or
  - (b) with the written consent of the **MCI holders** with at least 75% of the **MCIs** in the class.

### 6.11 Rights Attaching to Mutual Capital Instruments

- 1) The following rights attach to each **Mutual Capital Instrument**:
  - (a) the right to vote on the terms set out in Rule 6.12;
  - (b) the right to participate in dividends on the terms set out in Rule 6.13; and
  - (c) the right to participate in the distribution of profits or assets on a winding-up of the **company** on the terms set out in Rule 6.14.

### 6.12 Voting Rights

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

### 6.13 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.
- 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 **board** in its discretion but limited to the amount permitted by the **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**.

#### 6.14 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 Instruments** 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**.

#### 6.15 Form of Transfer

- 1) A **MCI holder** wishing to transfer a **MCI** must use a transfer that complies with the following requirements:
  - (a) the share transfer relates to **MCIs** only;
  - (b) the transfer is in writing; and
  - (c) the transfer is:
    - (i) in a form that the **board** approves; or
    - (ii) in any other usual or common form

#### 6.16 Ownership of Transfer

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

#### 6.17 Registration of Transfer

- 1) The **company** must not register a **MCI** transfer if:
  - (a) the **MCI** issue terms prohibit the transfer of the **MCIs** to the transferee;
  - (b) the transfer is not in the form set out in Rule 6.15;
  - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped;
  - (d) the **board** has approved the transfer of the **MCI** subject to conditions, and the **board** is not satisfied that the conditions have been complied with; or
  - (e) the **board** believes on reasonable grounds that registration of the transfer would cause or contribute to an unacceptable risk of the **company** failing to comply with **Prudential Standards**.
- 2) The **company** may refuse to register a **MCI** transfer unless:
  - (a) the transferor and transferee have executed the share transfer;
  - (b) a certificate for the **MCIs** accompanies the transfer;
  - (c) the **board** has all information that it reasonably requires to establish the right of the transferor to transfer the **MCIs**; and

- (d) the **board** has all information that it reasonably requires to establish that the transferee agrees to be a **MCI Holder** of the **company**.
- 3) The transferor of **MCIs** remains the holder of those **MCIs** until the **company** enters the transferee's name as holder of those **MCIs** in the **Register of Members**.

#### 6.18 Powers of Attorney

- 1) The **company** may assume that a power of attorney authorising the attorney to transfer some or all of the **MCI holder's** shares that a **MCI holder** holds:
  - (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 **MCI holder** has died.

#### 6.19 Suspension of Registration

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

---

## Division 7. — Transmission of Shares

---

### 7.1 Transmission of Shares on Death

- 1) On the death of a **member** or **MCI holder**, the **company** may recognise either the personal representative of the deceased **member** or deceased **MCI holder** or another person who appears to the **company** to be entitled to the estate of the deceased **member** or deceased **MCI holder** as being entitled to the deceased **member's** or **MCI holder's** interest in the **shares**.
- 2) If the personal representative gives the **company** the information it reasonably requires to establish an entitlement to be registered as holder of the **shares**, the personal representative may elect to:
  - (a) be registered as the holder of the **shares**; or
  - (b) apply to terminate the membership.
- 3) The personal representative is entitled, whether or not registered as the holder of **shares**, to the same rights as the deceased **member** or **MCI holder**.

### 7.2 Transmission of Shares on Bankruptcy

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

### 7.3 Transmission of Shares on Mental Incapacity

- 1) If a person entitled to **shares** because of a **member's** or **MCI holder's** mental incapacity gives the **company** the information, it reasonably requires to establish the person's entitlement to be registered as a holder of the **shares**:
  - (a) the person may require the **company** to register the person as holder of the **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** or **MCI holder**.

---

## Division 8. — Holding General Meetings

---

### 8.1 Calling a General Meeting

- 1) A **general meeting** may only be called by **board** resolution or as otherwise provided in the **Corporations Act**.
- 2) The **board** may decide the content of a notice of a general meeting, but they must state the general nature of the business to be transacted at the meeting and any other matters required by the **Corporations Act**.
- 3) Unless the **Corporations Act** provides otherwise:
  - (a) no business may be transacted at a **general meeting** unless the general nature of the business is stated in the notice calling the meeting; and
  - (b) except with the approval of the **board** or the chair, no person may move any amendment to a proposed resolution, the terms of which are set out in the notice calling the meeting, or to a document which relates to that resolution and a copy of which has been made available to members to inspect or obtain.
- 4) Subject to the **Corporations Act** the:
  - (a) non-receipt of a notice of any **general meeting** by; or
  - (b) accidental omission to give notice to,
 any person entitled to such notice does not invalidate anything done (including the passing of a resolution) at that meeting.

### 8.2 Use of technology at general meetings

- 1) The **company** may hold a meeting of **members, voting MCI holders** or both at one or more physical venues and using any virtual meeting technology that gives the **members, voting MCI holders** or both (as applicable) as a whole a reasonable opportunity to participate.
- 2) The **company** may hold a meeting of **members, voting MCI holders** or both using only virtual meeting technology.
- 3) 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:
  - (a) adjourn the meeting until the difficulty is remedied; or
  - (b) 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.
- 4) In this Constitution, a reference to a person being “present” at a meeting includes participating using virtual meeting technology.

### 8.3 Adjourning a General Meeting

- 1) The chair of a **general 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 a meeting adjourned in accordance with paragraph 1 if the adjournment is for one 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.

#### 8.4 Proceedings at General Meetings

- 1) No business may be transacted at a **general meeting**, except the election of a chair and the adjournment of that meeting, unless a quorum of members is present when the meeting proceeds to business.
- 2) The quorum for a **general meeting** is 15 **members** present in person or via virtual meeting technology.
- 3) If a quorum is not present within 30 minutes after the time for the **general meeting** set out in the notice of meeting, the meeting is adjourned to the date, time and place the **board** specifies at the time of adjournment. If the **board** does not specify one 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 **general meeting** is dissolved.

- 4) The chair of a **general meeting** 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) — another person appointed by the **board**.
- 5) If the chair or another person appointed by the **board** is not available within 30 minutes of the appointed start of the general meeting, or both decline to act, the persons that are **members** or **voting MCI holders** present must elect an individual present to chair the meeting.
- 6) The chair of a **general meeting**:
  - (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
  - (b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the **general meeting**; and
  - (c) may, having regard where necessary to the **Corporations Act**, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting.

A decision by the chair under this Rule is final.

- 7) The Standing Orders in Appendix 1 apply to the conduct of debate at **general meetings**.

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

Appendix 3 applies to any Demutualisation Resolution (as defined in Appendix 3) to be submitted to Members.



---

## Division 9. — Voting at General Meetings

---

### 9.1 Voting

- 1) A resolution put to the vote at a **general meeting** must be decided on a show of hands of the **members** or **voting MCI holders** present and entitled to vote unless a poll is demanded.
- 2) Before a **general 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 **general 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) In the event of an equality of votes, the chair does not have a casting vote in addition to the chair's deliberative vote.

### 9.2 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.

### 9.3 Voting on a Poll

- 1) A poll cannot be demanded on any resolution concerning the election of a person to chair the **general meeting**.
- 2) A poll on the question of an adjournment must be taken immediately. The chair may direct when and how any other poll must be taken.
- 3) The **general meeting** may conduct other business even though a poll is demanded on a resolution.
- 4) The demand for a poll may be withdrawn with the chair's consent.

### 9.4 Body Corporate Representatives

- 1) A body corporate **member** or **voting MCI holder** that appoints a body corporate representative must give the **company**:
  - (a) if the **member** or **voting MCI holder** 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 **general meeting** at which the representative may exercise the **member's** or **voting MCI holder's** rights.
- 2) In addition to the rights and powers a representative of a **member** or **voting MCI holder** may exercise under the **Corporations Act**, the representative may exercise the right to vote in a ballot to appoint **directors** by election.

## 9.5 Proxies

- 1) A **member** or **voting MCI holder** who is entitled to attend and cast a vote at a meeting of the **Company** may appoint a person as that **member's** or **voting MCI holder's** (as applicable) proxy to attend and vote for the **member** or **voting MCI holder** (as applicable), subject to any rights or restrictions for the time being attached to any class of **shares** or **MCIs**.
- 2) The appointment of a proxy is revoked by the appointor attending and taking part in the meeting.
- 3) The **board** may determine the form of proxy document from time-to-time. An instrument appointing a proxy is valid if it is in the form described under the **Corporations Act**.
- 4) 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.
- 5) A proxy does not have a right to vote on a show of hands.
- 6) 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.
- 7) 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; or
  - (d) the **member** revokes the authority under which the proxy was appointed by a third party.

## 9.6 Objections

- 1) An objection to the qualification of a voter:
  - (a) may only be made at the **general meeting** or adjourned **general meeting** at which the vote objected to is cast; and
  - (b) must be ruled upon by the chair whose decision is final.

## 9.7 Voting in Different Capacities

- 1) A **member** may only exercise one vote at a **general meeting** or on an election of **directors** regardless of the fact they may hold more than one membership or hold more than one account.
- 2) If a **member** is also an **MCI holder**, that member has no more than one vote at a **general meeting**, regardless of the applicable terms of issue of the **MCI**.

---

## Division 10. — Directors - Appointment & Vacation of Office

---

### 10.1 Number of Directors

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.

### 10.2 Eligibility to be a Director

- 1) Subject to Rule 10.5 an individual is eligible to be a **director** if the person:
  - (a) in the case of a person to be appointed as a **member elected director** other than a member elected director appointed pursuant to Rule 10.4, 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 10.2(1)(e) the **fit and proper policy** sets out how the assessment is to be made.

### 10.3 Appointment by Members — Election

The **members** may appoint a person eligible to be a **director** under Rule 10.2(1) by an election held under the provision of Appendix 2.

### 10.4 Appointment by Board — Casual Vacancies

- 1) The **board** may appoint a person to be a **director**:
  - (a) if a **director's** office becomes vacant other than because the **director's** term of office has ended; or
  - (b) if, for any other reason, the number of **directors** is less than the minimum under Rule 10.1.
- 2) The **board** may only appoint a person who is eligible to be a **director** under Subrule 10.2(1)(b)-(e).
- 3) The term of office for a **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 **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 **director** appointed to fill a vacancy in paragraph (1)(b) ends at the end of the next **AGM** after the **director's** appointment.

### 10.5 Appointment by Board Generally

- 1) Subject to Subrule 10.5(3) the **board** may by resolution at any time, appoint a person as a **board appointed director**.

- 2) The term of office of a person appointed as a **board appointed director** under Subrule 10.5(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 **board appointed director** a person who is eligible to be a **director** under Subrule 10.2(1)(b)-(e).

## 10.6 Term of Office

- 1) Subject to the **Corporations Act** and the rotation provisions in this Rule, a **member elected 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 **member elected directors** appointed at an election is more than a third of the total number of **directors** on the **board** in Rule 10.1:
  - (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 the purposes of Subrule 10.6 (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.
- 4) At the end of this term, a **member elected director** must retire from office, but may offer themselves for re-election if they meet the eligibility criteria contained in this Constitution and the **Corporations Act**.

## 10.7 Automatic Vacation of Office

- 1) In addition to the circumstances prescribed by the **Corporations Act**, 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 appointed pursuant to Rule 10.4 or they are a **board 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 under the **fit and proper policy** which determines that they do 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**;
  - (h) becomes a disqualified person as defined in section 20 of the **Banking Act**;

- (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** Board Charter.

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

## 10.8 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.

## 10.9 Alternate Directors

- 1) In this Rule, unless the context requires otherwise:
  - (a) alternate means a person that a **director** appoints as their alternate **director** under Subrule (2), subject to the **board's** approval under Subrule (3), but only in the person's capacity as the alternate **director**.
  - (b) 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 10.2;
  - (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 their 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**.
- 4) The appointment only takes effect if the **board** approves the alternate's appointment.
- 5) 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.
- 6) 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 12.1 in relation to notice of **board** meetings.

- 7) The alternate may only be present at **board** meetings 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. The alternate does not have a conflict of interest, or a **material personal interest** in a matter that relates to the affairs of the company, solely by reason of the fact that the appointor has a conflict of interest or a **material personal interest**; and
  - (b) does not breach their 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 12.2 in relation to quorum at a **board** meeting. See Rule 12.4 in relation to voting on resolutions at **board** meetings. See Rule 13.2 in relation to **directors** not being present or voting on matters in relation to which they have a **material personal interest**.

- 8) The reference to 'all **directors**' in Rule 12.5 refers to:
- (a) 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;
  - (b) otherwise — the appointor and other **directors** but not the alternate.
- 9) The **company** must not provide remuneration to the alternate (in their 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 14.1 in relation to remuneration of **directors**.

- 10) 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 10.6 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 10.7 and Rule 10.8.

---

## Division 11. — Directors' Powers

---

### 11.1 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** or this Constitution expressly allocates to the **general meeting**.
- 2) In discharging their duties under this Constitution, applicable company legislation and the general law, the **directors** or other officers of the **company**:
  - (a) will include in their consideration the following factors:
    - (i) the likely consequences of any decision or act of the **company** in the long term; and
    - (ii) the interests of the **company's** employees; and
    - (iii) the need to foster the **company's** business relationships with suppliers, customers and others; and
    - (iv) the impact of the **company's** operations on the community and the environment; and
    - (v) the desirability of the **company** maintaining a reputation for high standards of business conduct; and
    - (vi) the interests of the **members**; and
    - (vii) the ability of the **company** to create an overall positive impact on society and the environment; and
  - (b) Need not give priority to a particular factor referred to in paragraph (a) over any other factor (included in paragraph (a) or otherwise).

### 11.2 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 method using electronic means.

### 11.3 Delegation by the Board

- 1) The **board** may delegate any of its powers to any committee of **directors** or any other person or persons, subject to the application of the **fit and proper policy**. The **board** may permit the delegate to sub-delegate any powers delegated to them.
- 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.

---

## Division 12. — Board Meetings

---

### 12.1 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.

### 12.2 Quorum of Board

- 1) The quorum for a **board** meeting is one half the number of **directors** under Rule 10.1 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**; and
  - (b) the **board** may conduct business by circulating resolution under Rule 12.5.

### 12.3 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).

### 12.4 Passing of Board Resolutions

- 1) A resolution of the **board** must be passed by a majority of the votes cast by **directors** present and entitled to vote on the resolution.
- 2) In the event of an equality of votes, the chair has a casting vote in addition to the chair's deliberative vote.

### 12.5 Circulating Resolutions

- 1) The **board** may pass a resolution without a **board** meeting if all 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.
- 4) The document may be in purely electronic form (such as an email) or be accessible using an electronic system maintained by the company. The **directors** who are in favour must:
  - (a) return a copy of the signed document or otherwise authenticate their approval of the resolution using electronic means; or
  - (b) confirm in writing that they are in favour of the resolution.
- 5) A resolution passed in accordance with this Rule 12.5 shall be tabled at the next following meeting of the **board** and be noted in the minutes of that meeting.



## 12.6 Committees of the Board

- 1) The **board** may establish one or more committees consisting of such number of **directors** and other persons as the **board** thinks fit.
- 2) The **board** may appoint one of committee members to chair committee meetings. The **board** may determine the period for which the **director** is to be the committee chair.
- 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 entitled to vote.
- 5) In the event of an equality of votes, the chair does not have a casting vote in addition to the chair's deliberative vote.

---

## Division 13. — Conflicts of Interest

---

### 13.1 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:
    - (viii) 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 before acting in a matter that relates to the interest; and
    - (ix) may be present and vote on the matter under the **Corporations Act**.
- 2) The **director** is not in breach of their duties to the **company** merely because they act 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.

### 13.2 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**.
- 2) The **director** is not in breach of duty to the **company** merely because they do 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.

### 13.3 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** 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**.

---

## Division 14. — Remuneration, Indemnity and Insurance

---

### 14.1 Remuneration of Directors

The **board** may determine **directors'** remuneration in accordance with the **Corporations Act**.

### 14.2 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:
    - (x) in attending **board** meetings or any meetings of committees of the **board**; and
    - (xi) in attending any general meetings; and
    - (xii) otherwise in connection with the **company's** business; and
  - (b) subject to the **Corporations Act** and the **Banking Act**, insurance premiums for a contract that insures the **director** against liabilities that the **director** incurs as an officer of the **company** or a related body corporate of the **company**.

### 14.3 Indemnities for Officers and Former Officers

- 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** and the **Banking Act** permit:
  - (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 when a claim is made against the **indemnified person** after they have ceased to be an officer or agent of the **company**.

---

## Division 15. — Administration

---

### 15.1 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 **board**.
- 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.

### 15.2 Secretary

The **company** must have at least one **secretary** appointed by the **board**. Subject to Rule 15.3, 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**.

### 15.3 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 - Standing Orders

## **A1-1 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.

## **A1-2 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.

## **A1-3 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.

## **A1-4 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.

## **A1-5 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 2 - Election of Directors

## Ballot at AGM

### A2-1 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>A2-2(1)</b> )	84 days before <b>AGM</b>
Nominations close (see clause <b>A2-2(2)</b> )	63 days before <b>AGM</b>
Notice of the Annual General Meeting	21 days before <b>AGM</b>
Conduct of ballot and announcement of <b>directors</b> (see clause <b>A2-9(3)</b> )	<b>AGM</b>

### A2-2 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 10.2(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 10.6 may stand for re-election without nomination (and then will be a **candidate**) provided the **director** is eligible for election under Subrule 10.2(1)
- 5) A **candidate** must give the **company** all information and consents the **company** reasonably requests to determine if the **candidate** is disqualified by law from acting as a **director**.
- 6) A **candidate** must give the **company** all information and documentation the **company** 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** 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** agrees to extend the time for receiving the information
- 8) Each **candidate** must, if required by the **company**, submit to an interview by the **company**. The interview can be conducted in such manner as the **company** determines.
- 9) If the **company** 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**.

#### **A2-3 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**.

#### **A2-4 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 **Register of Members**.

#### **A2-5 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.

## A2-6 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 **Register of members**.

## A2-7 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.

## A2-8 Closure of the Ballot

The ballot closes at the time the returning officer specifies.

## A2-9 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.

#### **A2-10 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.

#### **A2-11 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 3 - Mutuality Protection

## A3-1. Application of Appendix 3

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 **company** (whether acting through the **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 company'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 company; 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**; 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**; or
  - (v) **member shares** becoming transferable or capable of sale or assignment; or
- (b) a **member** becoming entitled to more than one vote at a **general meeting** for each capacity in which the person is a member of the **company**; or in relation to which the consent of the Treasurer is required pursuant to either section 63 of the **Banking Act** 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**; 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**).

## A3-2. 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.

‘**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:
- (b) 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;

- (c) 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
- (d) 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**;
- (e) 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;
- (f) 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** 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 takes effect under the **Corporations Act** who has been a **member** for not less than 12 months.

**Note:** This Appendix took effect on 16 November 2022.

**'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.

### A3-3. 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.

### A3-4. Disclosure Requirements

- (a) 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**:
  - (i) 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
  - (ii) 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.
- (b) 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**.