

COMMUNITY MUTUAL LTD

ABN 21 087 650 360

Constitution

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Preamble

Community Mutual Ltd (*company*) is a public company limited by shares which is regulated under the *Corporations Act*. The company is licensed as an Authorised Deposit Taking Institution (ADI) and is required to comply with the standards issued by the Australian Prudential Regulation Authority (APRA). The company operates 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, the company may not accept a deposit from, or grant financial accommodation to, a person who is not a member.
2. The company 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 company's shares.
3. The company may accept deposits from, or grant financial accommodation to, another ADI.

Membership and Member Shares

How to become a member

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

How many member shares the company may issue a person

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

Consideration paid for membership shares

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

Voting

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

Dividends and Surplus

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

Redemption and Transfer

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

Additional Shares*Definition*

17. All shares issued by the company other than member shares are additional shares.

Issue of additional shares only to members

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

Voting

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

Dividends and Surplus

21. An additional share may confer the right to participate in the company's profits through payment of dividends.
22. An additional share may confer a right to participate in surplus when the company is wound up but only to the extent of:
 - (a) repayment of capital paid on the additional shares; and
 - (b) payment of arrears of cumulative dividends.
23. The right to participate in profits and surplus conferred by additional shares may be preferred, equal or deferred to the rights conferred by the member shares.

Redemption and Transfer

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

Accumulation of Securities

26. Accumulation of securities issued by the company must be restricted so that no person, or group of associated persons, may exercise a significant degree of influence over the affairs of the company.

Directors

27. Only a member of the company may be a director of the company.

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)

APRA means the Australian Prudential Regulation Authority

ASIC means the Australian Securities and Investments Commission

board means the board of **directors**

company means the company described in this Constitution

demutualisation event means an event that triggers the application of the provisions of clause 29(1) of Part 5 of Schedule 4 to the Corporations Act 2001 (Cth) (except to the extent ASIC has exempted the company from the operation of that Part in relation to that event) or is a demutualisation for the purposes of section 63 of the Banking Act 1959 (Cth)

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

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

Director Nominations Committee means the committee appointed by the **board** in accordance with Appendix 6

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

general meeting means a general meeting of the **members**

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

MEI means a share in the capital of the company issued or arising from the conversion of a Regulatory Capital Security and which meets the requirements of the Mutual Equity Requirements

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

member share means a share as described in Appendix 2 Division 1.

mutual equity requirements means the requirements of APRA's prudential standards for a mutual equity interest and the requirements of ASIC for the issue of the MEI not to be a Demutualisation Event

prudential standard means:

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

regulatory capital security means a share, note or other security eligible for inclusion as Tier 1 Capital or Tier 2 Capital, in each case as defined by APRA from time to time

Banking Legislation Commentary

APRA may determine prudential standards under *Banking Act 1959* (Cth) s 11AF. The Treasurer may make prudential regulations under *Banking Act 1959* (Cth) s 11A. Section 12 and Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth) specify the APRA transitional prudential standards that apply to the company.

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

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

Tier 1 share means a share (other than a member share) which is eligible for inclusion as Tier 1 Capital as defined by APRA from time to time as described in Appendix 2 Division 2

1.2 Interpretation

- (1) In this Constitution, unless the context requires otherwise:
 - (a) the singular includes the plural and vice versa;

- (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
 - (c) words and expressions defined in the *Corporations Act* have the same meaning in this Constitution;
 - (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
 - (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
 - (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument; and
 - (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
 - (i) that replaces it; or
 - (ii) to which substantially all the powers and functions relevant to this Constitution are transferred.
- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the company complying with the *Corporations Act* requirements that apply to removal or modification of constitutional provisions.

1.3 Time

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

1.4 Replaceable Rules do not Apply

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

1.5 Notices

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

Corporations Act Commentary

The parties to the Constitution are the company and its members, directors and secretaries: see s 140(1).

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

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

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

Delivery Method		Time Person Receives Notice
1	Hand delivering the notice personally	The other person receives the notice: (i) if hand delivered before 4:00pm on a business day — on that business day (ii) if hand delivered after 4:00pm on a business day — on the next business day (iii) if hand delivered on a day other than a business day — on the next business day
2	Sending the notice by pre-paid post	The other person receives the notice on the third business day after posting unless it is actually delivered earlier
3	Sending the notice by facsimile transmission	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful
4	Sending the notice by electronic means	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day (ii) if sent after 5:00pm on a business day — on the next business day (iii) if sent on a day other than a business day — on the next business day 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
5		If a person sends a member a notice in accordance with this Rule, any person to whom that member transfers or transmits a share is taken to receive the notice when the first person sent the member the notice.

Division 2. — Objects & Limit on Powers

Corporations Act Commentary

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

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

2.1 Objects

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

2.2 Customers Must be Members

The **company** may only accept **deposits** from, or provide **financial accommodation** to, its **members**. However, this Rule does not apply to the following persons who are not **members**:

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

Division 3. — Membership

3.1 Admission to Membership

Corporations Act Commentary

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

- (1) Subject to any other Rule allowing admission of **members**, the **company** may admit a person as a **member** only if:
- (a) the person makes an application in a form and with the content the **company** requires;
 - (b) the person applies for a **member share**;
 - (c) if the person is not a minor — the person pays the **subscription price** for the **member share**; and
 - (d) if the person is a minor — the person pays an amount equal to 20% of the **subscription price** for the **member share**.

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 9.3, Rule 10.1, Rule 10.2 or Rule 10.3.

- (2) The **board** has an absolute discretion in exercising the **company's** power to admit **members** without any obligation to give a reason for not admitting a person as a **member**.
- (3) When the **company** admits a person as a **member**, the **company** must:
- (a) issue the **member share** to the person;
 - (b) enter the person's particulars in the Register of Members as required by the *Corporations Act*; and
 - (c) give the person notice that it has admitted the person as a **member**.

3.2 Delegation of Power to Admit Members

The **board** may delegate its power to admit **members** to officers of the **company**. The delegation must not include authority:

- (a) to further delegate the power to admit **members**.

3.3 Joint Members

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

Corporations Act Commentary

The Corporations Act recognises registration of joint members of a company. The joint members:

- are to be a **single** member of the company
- may also be members in their own right or jointly with others: see S169(8).

Division 4. — Termination of Membership

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

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

- (a) the **company** redeems the **member's member share** under Rule 4.2, Rule 4.3 or Rule 4.4;
- (b) the **company** forfeits the **member's member share** under Subrule 6.3(2);
- (c) the **member** surrenders the **member's member share** under Subrule 6.3(5);
- (d) if the **member** is an individual — the **member**:
 - (i) dies;
 - (ii) becomes a bankrupt and the **company** registers the **member's** trustee in bankruptcy as the holder of the **member's member share** under Rule 10.2; 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 10.3;
- (e) if the **member** is a body corporate — the **member** is deregistered or dissolved; or
- (f) if the **member** is a trustee for an unincorporated association — the **company** registers the transfer of the **member's member share** to another person who is to act as trustee for the unincorporated association;

Note: Rule 2.2 restricts the **company** from accepting further **deposits** from, or providing further **financial accommodation** to, persons who cease to be **members**.

4.2 Member's Request for Termination

- (1) A **member** may request termination of membership but only upon withdrawing all **deposits** and repaying all **financial accommodation**.
- (2) If a **member** makes a request under Subrule (1), the **company** must redeem the **member's member share** as soon as practicable after receiving the request. However, the **company** may defer redeeming the **member's member share** until the **board** is satisfied that the **member** has withdrawn all **deposits** and repaid all **financial accommodation**.

4.3 Termination by the Board

- (1) The **company** may redeem a **member's member share** by **board** resolution if:
 - (a) the **member** fails to discharge the **member's** obligations to the **company**;
 - (b) the **member** is guilty of conduct that the **board** reasonably considers to be detrimental to the **company**; or
 - (c) the **member** obtains membership by misrepresentation or mistake.
- (2) The **company** must give notice of the proposed resolution under Subrule (1) to the **member** at least 14 days before considering the proposed resolution.
- (3) At the time the **board** considers the proposed resolution, the **member** is entitled:
 - (a) to be present with or without the **member's** legal representative; and
 - (b) to be heard, either in person or through the **member's** legal representative.
- (4) On redeeming the **member share**, the **company** may pay the amount payable on redemption of the **member share** to the **member** by either:
 - (a) sending a cheque to the **member's** address as set out in the Register of Members; or
 - (b) crediting any of the **member's** accounts with the **company**,

at the time the **member share** is redeemed.

4.4 Termination Where Accounts Dormant

- (1) This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise.
- (2) The **company** may:
 - (a) determine that the **member's deposit** accounts are dormant; and
 - (b) redeem the **member's member share**,by board resolution if the **member** has not initiated any transactions in relation to any **deposit** account in the 12 month period before the date of the resolution.
- (3) The **company** must send notice of the proposed resolution under Subrule (2) to the **member** at the **member's** last known address as shown on the Register of Members at least 28 days before considering the proposed resolution.
- (4) On redemption of the **member share**, the **company** must pay the amount payable on redemption of the **member share** into the **member's** account.
- (5) If the **company** redeems a person's **member share** under this Rule, the person may require the **company** to reinstate the person's **deposit** accounts at any time before the **company** pays the money in the **deposit** account in accordance with the

relevant unclaimed money legislation. If the person requires the **company** to reinstate the person's **deposit** accounts:

- (a) the **company** must reinstate the person's **deposit** accounts as soon as practicable; and
- (b) if the **company** has redeemed the **member's member share** — the **company** must issue a **member share** to the person and may debit the **member's deposit** account for the subscription amount.

Banking Legislation Commentary

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

4.5 Delegation of Power to Terminate Members

- (1) The **board** may delegate its power to terminate **members** to the Chief Executive Officer of the **company**. The delegation must not include authority:
 - (a) to further delegate the power to terminate **members**.

Division 5. — Issue of Shares

5.1 Classes of Shares

The **company** may only issue:

- (1) **member shares**; and
- (2) **Tier 1 Shares**.

5.2 Board Power to Issue Shares

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

5.3 Restrictions on Issue of Member Shares

- (1) The **company** must not issue:
 - (a) options to subscribe for **member shares**;
 - (b) securities that may be converted to **member shares**; or
 - (c) securities with pre-emptive rights to **member shares**.
- (2) The **company** may only issue **member shares** in accordance with Subrule 3.1(3).
- (3) The **company** may only issue **member shares**:
 - (a) to persons who are not minors on the basis that the person pays the full **subscription price** on issue; and
 - (b) to minors on the basis that the minor pays 20% of the **subscription price** on issue.
- (4) The **company** may only issue 1 **member share** to any person. However, the **company** may issue to a trustee for an unincorporated association:
 - (a) 1 **member share** to the trustee in the trustee's own right; and
 - (b) 1 **member share** to the trustee as trustee for the unincorporated association.

Note: The **company** can issue a **member share** to a person who already constitutes a joint **member**. See Rule 3.3

Division 6. — Calls, Forfeiture and Liens

6.1 Payment of Calls on Shares

Corporations Act Commentary

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

- (1) This Rule applies if some or all of the **subscription price** for a share is payable on the **company** calling up payment of some or all of the unpaid **subscription price**. This Rule applies in relation to a share subject to:
 - (a) any restriction in the terms of issue for the share; and
 - (b) any **special resolution** providing that the **company** can only call up some or all of the **subscription price** for shares if the **company** becomes an externally-administered body corporate
- (2) The **company** may call for payment of any amount of the unpaid **subscription price** for a share by **board** resolution. The **company** must give a **member** holding a share on which the **company** has made a call a notice setting out how much, when and how the **member** must make the payment. The **company** must give the notice at least 14 days before the time the **member** must pay the call.
- (3) The **company** may revoke or postpone a call on a share by **board** resolution. The **company** must give each **member** holding a share for which the **company** has revoked or postponed a call notice as soon as practicable after the **board** resolution.
- (4) In any proceeding to recover unpaid instalments, a **member** is conclusively presumed to be liable for a call if:
 - (a) the **company's** minutes record the **board** resolution calling for payment of the amount of the call;
 - (b) the **member's** name appeared in the Register of Members as holder of the share on the date of the **board** resolution; and
 - (c) the **company** gave the **member** a notice in accordance with Subrule (2).
- (5) At any time, the **company** may accept from a **member** prepayment of any amount of the unpaid **subscription price** on a share.

6.2 Effect of Failure to Pay Unpaid Amounts

- (1) This Rule applies if a **member** does not pay any amount of the unpaid **subscription price** for a share at the time the amount becomes due. This Rule does not limit any other remedies that the **company** may have against the **member**.

- (2) The **member** must pay:
- (a) the amount due on the share; and
 - (b) all costs and expenses that the **company** incurs (including, without limitation, legal expenses on a solicitor and own client basis or full indemnity basis, whichever is the higher) because the **member** did not pay the amount when it became due.

The **company** may waive all or part of the expenses payable under this Subrule by **board** resolution.

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

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

6.3 Forfeiture and Surrender

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

- (6) A **member** whose shares have been forfeited remains liable to pay the **company** the amounts due:
- (a) less any amount that the **company** must pay the **member** on redemption of the shares; and
 - (b) less any amount that the **company** receives on sale or disposal of the forfeited shares.

6.4 Liens

- (1) The **company** may at any time exempt a share wholly or in part from this Rule by **board** resolution.
- (2) The **company** has a first and paramount lien on:
- (a) every partly-paid share that a **member** holds; and
 - (b) the proceeds of sale of every partly paid share that the **member** holds; and
 - (c) dividends payable on every partly-paid share that the **member** holds,
- for all amounts, whether presently due or not:
- (d) payable in relation to the share; or
 - (e) that the **member** or the **member's** estate otherwise owes to the **company**.
- (3) If an amount secured by a lien in Subrule (2) is presently due, the **company** may give the holder of the share a sale notice:
- (a) setting out:
 - (i) how much is due; and
 - (ii) when the **member** must pay the amount due; and
 - (b) stating that, if the **member** does not pay this amount by that date, the **company** may sell the share.

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

- (4) If a **member** does not pay the amount due by the date stated in the sale notice under Subrule (3), the **company** may sell the shares on the terms and in the manner that the **board** determines. The **company** may:
- (a) execute a share transfer to give effect to a sale of the shares; and
 - (b) register the transferee as the holder of the shares.

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

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

Division 7. — Dividends

Corporations Act Commentary

The *Corporations Act* imposes obligations before any dividends can be paid: see s 254T.

7.1 Payment of Dividends

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

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

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

Corporations Act Commentary

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

7.2 Differential Dividends

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

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

7.3 Interest on Dividends

Interest is not payable on a dividend.

Division 8. — Share Certificates

Corporations Act Commentary

Company's do not have to issue certificates to members for member shares: see *Corporations Regulations* reg 12.08.08. However, company's that issue other classes of shares have to issue certificates for those other classes of shares: see s 1071H.

A member whose certificate is lost or destroyed may apply to the company for a new certificate. The company must issue a new certificate although it may require the member to do one or more of the following:

- advertise the loss or destruction of the certificate; and
- provide the company with an indemnity: see s 1070D.

8.1 Share Certificates

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

Division 9. — Transfer of Shares (by members)

9.1 Form of Share Transfer

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

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

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

9.2 Ownership of Share Transfer

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

9.3 Registration of Share Transfer

- (1) The **company** must not register a share transfer if:
 - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
 - (b) the share transfer is not in the form set out in Rule 9.1; or
 - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The **company** may refuse to register a share transfer unless:
 - (a) the shares are fully-paid;
 - (b) the **company** does not have a lien on the shares;
 - (c) the transferor has executed the share transfer;
 - (d) the transferee has executed the share transfer;
 - (e) a certificate for the shares accompanies the share transfer;

- (f) the **board** has all information that it reasonably requires to establish the right of the transferor to transfer the shares; and
 - (g) the **board** has all information that it reasonably requires to establish that the transferee agrees to be a **member** of the **company**.
- (3) The transferor of shares remains the holder of those shares until the **company** enters the transferee's name as holder of those shares in the Register of Members.

Corporations Act Commentary

If a company refuses to register a transfer of shares, it must give the transferee notice of the refusal within 2 months of the date the share transfer was lodged at the company's registered office: see s 1017E.

9.4 Powers of Attorney

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

9.5 Suspension of Registration

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

Division 10. — Transmission of Shares

10.1 Transmission of Shares on Death

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

10.2 Transmission of Shares on Bankruptcy

Corporations Act Commentary

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

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

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

10.3 Transmission of Shares on Mental Incapacity

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

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

Division 11. — Holding Members' Meetings

Corporations Act Commentary

Holding a members' meeting

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

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

Notice of members' meeting

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

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

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

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

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

Content of notice

A notice convening a members' meeting must

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

Auditor's right to attend

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

Members' right to give notice of a resolution

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

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

Members' request for statement to be distributed

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

The AGM

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

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

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

The chair of the AGM must:

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

11.1 Calling Meetings of Members**Corporations Act Commentary****Members' right to call a general meeting**

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

The **board** may call a **members'** meeting.

11.2 Adjourning Meetings of Members

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

11.3 Proceedings at Members' Meetings

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

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

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

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

- (3) The chair of **members'** meetings is:
 - (a) the chair of meetings of the **board**; or
 - (b) if the chair of meetings of the **board** is not present or declines to act for the meeting (or part of it) — the deputy chair of meetings of the **board**.

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

- (4) The Standing Orders in Appendix 3 apply to the conduct of debate at **members'** meetings.

Division 12. — Voting at Members' Meetings

12.1 Voting

- (1) A resolution put to the vote at a **members'** meeting must be decided on a show of hands unless a poll is demanded.
- (2) Before a poll is taken, the chair must inform the meeting how many proxy documents the **company** has received that validly appoint a person present at the meeting as proxy.
- (3) The **members'** meeting passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (4) The chair does not have a casting vote in addition to his or her deliberative vote.

12.2 Voting on a Show of Hands

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

12.3 Voting on a Poll

Corporations Act Commentary

Section 250L allows the following to demand a poll:

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

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

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

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

12.4 Body Corporate Representatives

Corporations Act Commentary

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

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

12.5 Proxies

Corporations Act Commentary

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

- (1) 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 signature; and
 - (b) the proxy's name or the name of the office that the proxy holds.
- (2) A proxy does not have a right to vote on a show of hands.
- (3) 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.
- (4) Unless the **company** receives written notice of the matter before the meeting at which a proxy votes starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
 - (a) the appointing **member** dies; or
 - (b) the **member** is mentally incapacitated;

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

12.6 Objections

An objection to the qualification of a voter:

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

Division 13. — Directors — Appointment & Vacation of Office

13.1 Number of Directors

The **board** must have a minimum number of 5 **directors**, or such greater number as the **board** may determine from time to time.

Corporations Act Commentary

Section 201A(2) provides that companies must have at least 3 directors (not counting alternate directors) and that at least 2 must ordinarily reside in Australia. The *Banking Act* and CPS 510 require and ADI to have at least 5 directors.

13.2 Eligibility to be a Director

- (1) An individual is eligible to be a **director** if the person:
- (a) is a **member**;
 - (b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; and
 - (c) has not been disqualified by law from being or acting as a **director**.
- (2) A person is not eligible to be appointed **director** under Rule 13.3 if the **Director Nominations Committee** has determined that the person does not have the appropriate fitness and propriety to be and act as a **director**, by reference to the **board's** Fit and Proper Policy.

Corporations Act Commentary

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

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

Banking Act Commentary

Banking Act s 20 provides that a person is disqualified from being a director of the company if:

- (a) the person has been convicted of an offence against or arising out of:
 - (i) the Banking Act;
 - (ii) the Financial Sector (Collection of Data) Act 2001; or
 - (iii) the Corporations Act 2001, the Corporations Law that was previously in force, or any law of a foreign country that corresponds to that Act or to that Corporations Law;
- (b) the person has been convicted of an offence against or arising out of a law in force in Australia, or the law of a foreign country, where the offence related or relates to dishonest conduct, or to conduct relating to a company that carries on business in the financial sector;
- (c) the person has been or becomes bankrupt;

- (d) the person has applied to take the benefit of a law for the relief of bankrupt or insolvent debtors;
- (e) the person has compounded with his or her creditors;
- (f) APRA has disqualified the person; or
- (g) the person has been disqualified under the law of a foreign country from managing, or taking part in the management of, an entity that carries on the business of banking or insurance or otherwise deals in financial matters.

Section 23 provides that the Federal Court may revoke a person's disqualification on an application by the disqualified person or on its own initiative. The revocation takes effect on the day on which the Federal Court makes it.

APRA's *Prudential Standard CPS 520: Fit and Proper for ADIs*, paragraphs 5 to 14, requires:

- (a) the board to have a Fit and Proper Policy that:
 - (i) sets out "fit and proper requirements" for its responsible persons (including its directors);
 - (ii) addresses the fit and proper criteria in paragraph 24 of CPS 520;
 - (iii) addresses the company's process for determining whether a person is a disqualified person as defined in the Banking Act.
- (b) the company to have a clearly defined process to gather evidence and undertake fit and proper assessments,
- (c) the company to have a process for dealing with persons who are deemed not fit and proper;
- (d) the company to apply the fit and proper requirements prior to appointing directors and on at least an annual basis for existing directors;
- (e) the company to publish an overview of its Fit and Proper Policy on its website or make it readily available to the public on request.

13.3 Appointment by Members — Election

The **members** may appoint a person to be a **director** by election held under the provisions of Appendix 4.

13.4 Appointment by Board

- (1) The **board** may appoint **directors** provided always that the majority shall be appointed in accordance with Rule 13.3.
- (2) 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; and
 - (b) if, for any other reason, the number of **directors** is less than 5, or such greater number that the **board** has determined under Rule 13.1.

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

- (3) The term of office for a **director** appointed to fill a vacancy in paragraph (1)(a) ends:
- (a) if the **general meeting** approves 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 in accordance with Subrule 13.4(1) must not exceed three (3) years, but nothing in this Subrule prevents the Board from re-appointing such a **director** for a further term or terms.

13.5 Term of Office

- (1) Subject to the *Corporations Act* and the rotation provisions in this Rule, a **director's** term of office:
- (a) starts at the end of the AGM at which the **director's** election is announced; and
 - (b) ends at the end of the third AGM after the AGM at which the **director's** election is announced.
- (2) If the number of **directors** that **members** appoint is more than a third of the maximum number of **directors** on the **board** in Rule 13.1:
- (a) the term of office for the third of the **board** that receives the most votes at the election, ends at the end of the third AGM after the AGM at which the **directors'** election is announced; and
 - (b) the term of office for the remainder ends at the end of earlier AGMs where less than a third of the **board** is due to retire at those earlier AGMs.

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

- (3) For purposes of Subrule (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.

13.6 Automatic Vacation of Office

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

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

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

Corporations Act Commentary

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

Banking Act Commentary

Under *Banking Act* s 23, APRA may direct the company in writing to remove a director from office if APRA is satisfied that the director:

- (a) is a disqualified person; or
- (b) does not meet one or more of the criteria for fitness and propriety set out in the prudential standards.

The direction takes effect on the day specified in it, which must be no earlier than 7 days after it is signed.

The company has power to comply with this direction to remove the director by a written notice signed by:

- (a) the Chair; or
- (b) a majority of directors (excluding any director who is the subject of the direction).

The company commits an offence if it fails to comply with the direction.

13.7 Resignation

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

13.8 Director Nominations Committee

The **board** must establish a **Director Nominations Committee** in accordance with Appendix 6.

Division 14. — Directors' Powers

14.1 Powers and Duties of the Board

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**.

14.2 Negotiable Instruments

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

14.3 Delegation

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

Corporations Act Commentary

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

- (2) The **board** must establish policies for the guidance of delegates in the exercise of any powers so delegated.
- (3) Without limiting its powers, the **board** may appoint a person to be the **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 15. — Directors' Meetings

Corporations Act Commentary

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

15.1 Calling and Conduct of Board Meetings

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

15.2 Quorum of Board

- (1) The quorum for a **board** meeting is one half the maximum number of **directors** under Rule 13.1 or such other number as the **board** determines and the quorum must be present at all times during the meeting.
- (2) If, at any time, the number of **directors** is less than the quorum:
 - (a) the **board** may meet only for the purpose of filling any casual vacancies or for calling a general meeting of **members**; and
 - (b) the **board** may conduct business by circulating resolution under Rule 15.5.

15.3 Chair of Board

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

15.4 Passing of Directors' Resolutions

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

15.5 Circulating Resolutions

- (1) The **board** may pass a resolution without a **board** meeting if a majority of the **directors** entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (2) Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.
- (3) Any document referred to in this rule may be in the form of a facsimile transmission or electronic communication.
- (4) The resolution is passed when the last **director** to form the majority signs the resolution.

15.6 Committees of Directors

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

Division 16. — Conflicts of Interest

Corporations Act Commentary

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

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

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

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

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

Corporations Act Commentary

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

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

unless:

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

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

16.3 Execution of Instruments

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 17. — Remuneration, Indemnity and Insurance

17.1 Remuneration of Directors

- (1) The **board** may determine **director's** remuneration in accordance with the *Corporations Act*.

17.2 Travelling Expenses and Insurance

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

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

17.3 Indemnities for Officers and Former Officers

Corporations Act Commentary

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

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

Section 199B restricts the company from providing insurance for liability arising out of conduct involving a wilful breach of duty or a contravention of their duty not to misuse their position or information.

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

Division 18. — Administration

18.1 Secretary

Corporations Act Commentary

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

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

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

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

18.2 Resignation of Secretary

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

Appendix 1 — Objects

The **company** has the following objects:

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

Appendix 2 — Shares

Division 1 — Member Shares

A2-1 Subscription Price

The **subscription price** for a **member share** is \$ 10

A2-2 Rights, Obligations and Restrictions Attaching to Member Shares

- (1) The following rights attach to each **member share**:
 - (a) the right to vote on the terms set out in clause A2-3;
 - (b) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-4; and
 - (c) the right to redeem the **member shares** on the terms set out in clause A2-5.
- (2) The obligation to pay any unpaid **subscription price** on the terms set out in clause A2-6 attaches to each **member share**.
- (3) The restriction on transfer of **member shares** in clause A2-7 attaches to each **member share**.
- (4) The **company** may issue more **member shares** at any time. The issue of more **member shares** does not vary the rights attached to **member shares** that the **company** has already issued.

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

A2-3 Voting Rights

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

A2-4 Distribution on Winding-Up

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

A2-5 Redemption of Member Shares

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

A2-6 Payment for Member Shares by Minors

- (1) This clause applies to a **member** who was a minor when he or she became a **member**.
- (2) While a **member** remains a minor, except when the **company** is being wound up, the **company** must not:
 - (a) call for payment of the unpaid amount in respect of the minor's **member share**;
 - (b) credit any dividend to the unpaid amount in respect of the minor's **member share**; or
 - (c) otherwise set off against the unpaid amount any amounts owing by the **company** to the minor.
- (3) After reaching the age of 18, the **member** must pay the remaining 80% of the **subscription price** for the **member share** applicable as at the time he or she became a **member**. Any time after the **member** reaches the age of 18, the **board** may:
 - (a) call for payment of all or part of the unpaid amount in respect of the **member share**;
 - (b) credit any dividend to the unpaid amount in respect of the **member share**; or
 - (c) debit any of the **member's** deposit accounts with the **member's** consent.
- (4) After reaching the age of 18, the **member** may not exercise any of the rights attaching to his or her **member share** until the **member** pays the amount of the unpaid **subscription price**.

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

A2-7 Transfer of Member Shares

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

Division 2 — Tier 1 Shares (including MEI)

A2-8 Terms of Issue

The **company** may issue **Tier 1 shares** on terms the **board** approves, but subject to the rights and restrictions contained in this Division.

A2-9 Rights, Obligations and Restrictions Attaching to Tier 1 Shares

The following rights attach to each *Tier 1 share*:

- (a) the right to vote on the terms set out in clause A2-10;
- (b) the right to participate in dividends on the terms set out in clause A2-11; and
- (c) the right to participate in the distribution of profits or assets on a winding-up on the terms set out in clause A2-12.

A2-10 Voting Rights

Except as required by law, *Tier 1 shares* carry no voting rights.

A2-11 Dividend Entitlements

- (1) Each *Tier 1 share* carries a right to participate in dividends as specified in its terms of issue.
- (2) Dividends on the *Tier 1 shares* are non-cumulative.
- (3) Each *Tier 1 share* (other than an MEI) confers a right to receive dividends in priority to dividends (if any) which may become payable on *member shares*.
- (4) Each MEI confers a right to receive a dividend payable if and when determined by the directors in their discretion ranking equally with any dividends which may become payable on member shares (or such lesser right, if any, as may be provided in the terms of issue of the MEI).
- (5) Each *Tier 1 share* (other than an MEI) 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 *Tier 1 share*.
- (6) The dividend rate applicable in respect of an MEI shall be the rate specified in the terms of issue and shall be limited to the amount determined in accordance with the Mutual Equity Requirements.

A2-12 Distribution on Winding-Up

- (1) On a winding-up of the *company* each *Tier 1 share*:
 - (a) (other than an MEI) is entitled to repayment of the amount of capital paid up on the *Tier 1 share* equally with every other *Tier 1 share* and is not otherwise entitled to share in any surplus assets of the *company*; and
 - (b) in the case of an MEI, is entitled to a share in the surplus assets of the company which remain after the repayment of the subscription price on any member share and after the repayment of capital paid up on any Tier 1 Share which is not an MEI, such share to be determined in accordance with the Mutual Equity Requirements and to be paid from such surplus equally and proportionately with payments from such surplus on member shares.
- (2) *Tier 1 shares* rank behind *member shares* for repayment of capital on a winding-up.
- (3) *Tier 1 shares* may rank equally with or behind any other shares the terms of whose issue specify a ranking equally with, or in priority to, the *Tier 1 shares*.

A2-13 Conversion

The terms of a Tier 1 Share (other than an MEI) may provide for it to convert into an MEI (and for further MEIs to be issued in connection with that conversion) as approved by the **board** in the terms of issue.

Appendix 3 — Standing Orders

A3-1 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.

A3-2 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.

A3-3 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.

A3-4 Motions to be in Writing

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

A3-5 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 4 — Election of Directors

Ballot at AGM

A4-1 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 A4-2(1))	At least 56 days before AGM
Nominations close (see clause A4-2(2))	At least 21 days after call for nominations
Conduct of ballot and announcement of directors (see clause A4-9(3))	AGM

A4-2 Nominations

- (1) The **board** must give **members** a notice calling for **members** to nominate **candidates** not less than 56 days before the AGM. The **board** may give this notice, in addition to the methods allowed in Subrule 1.5 by advertisement:
 - (a) at the **company's** offices; or
 - (b) in newspapers.
- (2) The date nominations close:
 - (a) is determined by the **board**;
 - (b) must be no earlier than 21 days after notice is given under paragraph (1);
 - (c) must be specified in the notice given under paragraph (1).
- (3) 2 **members** together have the right to nominate a **candidate**. To nominate a **candidate**, the 2 **members** must give the **company** a notice of nomination before nominations close. The notice of nomination must:
 - (a) declare that the **candidate** is eligible to be a **director** under Rule 13.2(1);
 - (b) declare that the **candidate** is at least 18; and
 - (c) be signed by the nominating **members** and the **candidate**.

- (4) The **candidate** must:
 - (a) provide the **company** with all information and consents the **company** reasonably requests to determine if the **candidate** is disqualified by law from acting as a **director**;
 - (b) provide the **Director Nominations Committee** with all information and documentation that the **Director Nominations Committee** reasonably requests to assess the fitness and propriety of the **candidate** to be and act as a **director** by reference to the **board's** Fit and Proper Policy.
- (5) If the **Director Nominations Committee** determines that a **candidate** does not have the appropriate fitness and propriety to be and act as a **director**, by reference to the **board's** Fit and Proper Policy, that **candidate** immediately ceases to be a **candidate**.

A4-3 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.

A4-4 Appointment of Returning Officers

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

A4-5 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.

A4-6 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** at the Annual General Meeting.
- (4) On issuing each ballot paper, the returning officer must mark the member's name off the roll of **members**.

A4-7 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.

A4-8 Closure of the Ballot

The ballot closes at the time the returning officer specifies.

A4-9 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.

A4-10 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.

A4-11 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 5 — Mutuality Protection Rule

Division 1 — Introduction

A5-1 When the Mutuality Protection Rule Applies

(1) This Appendix applies in the following situations:

(1)	Modification or Repeal of Constitution	<p>In the event that the company proposes to modify or repeal this Constitution where the effect of the modification or repeal is:</p> <p>(a) to vary any of:</p> <p>(i) the terms on which it issues shares; or</p> <p>(ii) the rights and restrictions attaching to its shares, so that they are inconsistent with those set out in the Principles of Mutuality;</p> <p>(b) to enable the company to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality (whether or not any shares are so issued);</p> <p>(c) to vary any of the rights, obligations or restrictions attaching to membership so that they are inconsistent with those set out in the Principles of Mutuality;</p> <p>(d) to enable the company to admit members where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the Principles of Mutuality (whether or not any members are so admitted); or</p> <p>(e) that the company's Constitution is otherwise inconsistent with the Principles of Mutuality.</p>
(2)	Issue of Shares or Admission of Members	<p>In the event that the company (whether acting through its board, its members or otherwise) proposes:</p> <p>(a) to issue shares where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality;</p> <p>(b) to issue securities which confer the right or obligation to subscribe for shares (whether on conversion of the securities or exercise of any option) where:</p> <p>(i) the terms on which it issues the shares; or</p> <p>(ii) the rights and restrictions attaching to the shares, are inconsistent with those set out in the Principles of Mutuality; or</p> <p>(c) to admit members with rights, obligations or restrictions attaching to membership inconsistent with those set out in the Principles of Mutuality.</p>
(3)	Restructure	<p>In the event that the company (whether acting through its board, its members or otherwise) proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business, or any other form of corporate restructure, where after completion of the restructure:</p> <p>(a) the company no longer complies with the Principles of Mutuality;</p> <p>(b) one person, other than a person entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name, holds more than 90% of the shares in the company other than shares fitting the description of 'additional shares' in the Principles of Mutuality;</p> <p>(c) a group of associates, other than a group all of the members of which are</p>

		<p>entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name, between them hold more than 90% of the shares in the company other than shares fitting the description of 'additional shares' in the Principles of Mutuality;</p> <p>(d) a person not entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name has a legal or equitable interest in more than 20% of the company's gross assets, based on the latest report that the company has given the Australian Prudential Regulation Authority as at the time of the transfer;</p> <p>(e) a group of associates, other than a group all of the members of which are entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in their name, between them have a legal or equitable interest in more than 20% of the company's gross assets, based on the latest report that the company has given the Australian Prudential Regulation Authority as at the time of the transfer; or</p> <p>(f) the successor to the company's business is not entitled to use either the words 'credit union', 'credit society' or 'credit co-operative' in its name.</p>
(4)	Modification or Repeal of this Appendix	<p>In the event that the company proposes to modify or repeal:</p> <p>(a) any of the Clauses in this Appendix;</p> <p>(b) any of the Principles of Mutuality; or</p> <p>(c) this Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the Clauses in this Appendix.</p>

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

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

However, this Appendix does apply to:

- (f) a proposed modification or repeal that makes more than 1 change, and 1 or more of the changes is within the scope of item (4) of the Table in Subclause A6-1(1) but not excluded by this Clause; or
- (g) a proposed modification or repeal where some other Rule in this Constitution applies this Appendix to the modification or repeal.

(3) This Appendix, other than Subclause A5-1(4), ceases to have effect immediately upon the following conditions both being met:

- (a) the Australian Securities and Investments Commission publishes a written notice that this Appendix ceases to have effect in relation to the **company**; and
- (b) the Australian Securities and Investments Commission delivers a copy of the written notice to the **company**.

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

(4) If this Appendix ceases to have effect by reason of Subclause A5-1(3), it will again come into effect by **board** resolution upon the Australian Securities and Investments Commission doing any of the following:

- (a) withdrawing the written notice referred to in Subclause A5-1(3)(a);

- (b) making an order or exemption that permits the **company** to adopt or recommence the operation of this Appendix or provisions to the effect of this Appendix; or
- (c) otherwise permitting the **company** to recommence the operation of this Appendix.

A5-2 Definitions

- (1) In this Appendix:

associate means, in relation to a primary person:

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

control means the ability or power of an **entity**:

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

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

entity means any:

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

independent expert means an expert who is not an officer of the **company** or an associate of an officer of the **company**

Principles of Mutuality refers to Principles 4 to 25 and 27 of the Principles of Mutuality in the Preamble to this Constitution to the extent that any of those

Principles are not inconsistent with ASIC Policy Statement 147: Mutuality – Financial Institutions

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

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

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

A5-3 Demutualisation Approval Procedure

- (1) If this Appendix applies, the **company** must comply with the procedure set out in Divisions 2 and 3 before:
- (a) convening a meeting of members to vote on the proposed modification or repeal of the Constitution set out in items (1) and (4) of the Table in Subclause A5-1(1);
 - (b) issuing the **securities** or admitting the members as set out in item (2) of the Table in Subclause A5-1(1); or
 - (c) either convening, or, where relevant, applying for a court or other order to convene, one or more meetings (whichever is the earlier) to vote on the proposed restructuring or to appoint an administrator as set out in item (3) of the Table in Subclause A5-1(1).
- (2) If a meeting of members approves a proposed modification of the Constitution set out in items (1) and (4) of the Table in Subclause A5-1(1):
- (a) the resolution is of no effect until the procedure set out in Divisions 2 and 3 is complied with; and
 - (b) the **company** must send each member a notice that the resolution has been passed in breach of this Appendix, together with the other documents required to be sent in Clause A5-5.
- (3) The procedures in this Appendix apply in addition to any requirements specified in the *Corporations Act* or this Constitution in relation to the **proposed transaction**.
- (4) If the **proposed transaction** is proposed by:
- (a) the **board** — the **company** bears all costs associated with disclosure and conduct of the postal ballot;
 - (b) a member or a group of members — the member or group of members must pay all costs associated with disclosure, including printing and postage.
- The **board** is not required to assist any member or group of members proposing the **proposed transaction** unless they give the **company** an indemnity in a form satisfactory to the **board**.
- (5) If Subclause A5-3(4)(b) applies, members in general meeting may resolve that:
- (a) the **company** pay all costs associated with disclosure and conduct of the postal ballot;
 - (b) the **company** reimburse the members proposing the **proposed transaction** for the costs associated with disclosure and conduct of the postal ballot they incur.

A5-4 Approval of Demutualisation

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

Division 2 — Disclosure

A5-5 Disclosure Documents Sent With Ballot Paper

The **company** must send the following documents with the ballot paper that it must send each member under Clause A5-14:

- (a) a disclosure statement as described in Clause A5-6;
- (b) a director's statement from each director as described in Clause A5-7; and
- (c) an **independent expert's** report, commissioned by the **company**, as described in Clause A5-8.

A5-6 Disclosure Statement

- (1) The disclosure statement must adequately set out or explain the following (if relevant):
- (a) the procedural steps required in relation to the **proposed transaction**;
 - (b) how members' rights will change as a result of the proposed transaction and the consequences of the **proposed transaction** for members, including any:
 - (i) loss of rights;
 - (ii) change as to voting rights and rights to participate in the reserves and profits of the **company**;
 - (c) what benefits (if any) will be offered to members if the **proposed transaction** occurs, and why the benefits are considered appropriate, taking into account, among other things, the extent to which the benefits compensate the members for loss of rights;
 - (d) the basis upon which members' entitlement to the benefits will be determined, including:
 - (i) any minimum period of membership that a member must satisfy to receive benefits;
 - (ii) whether members must pay any amount or provide other value to receive benefits;
 - (e) any preferential allocation of benefits to members, or a class of members, and how that allocation is to be determined;
 - (f) any benefits that officers of the **company** (including retiring officers) or any **associates** of any officers may receive (whether directly or indirectly) in connection with the **proposed transaction**, other than in their capacity as a

member on the same terms as are available to other members, including without limitation:

- (i) any money or goods;
 - (ii) any preferential allocation of **securities**;
 - (iii) any retirement or superannuation benefits;
 - (iv) any compensation for loss of office;
 - (v) any concessional loans or other favourable or non-arms length transactions;
- (g) the implications of the **proposed transaction** in relation to:
- (i) the continuation of the **company's** business;
 - (ii) any major changes to be made to the **company's** business; and
 - (iii) changes to benefits, products and services;
 - (iv) the future employment of the present employees of the **company**;
- (h) whether the **company's** financial position has changed materially since the last balance sheet put before members at the last AGM;
- (i) the availability and consequences of other alternatives; and
 - (j) any other information that the members and their professional advisers would reasonably require to make an informed assessment whether to approve the **proposed transaction**.
- (2) If the **proposed transaction** involves the allocation of **securities** (whether by the **company** or some other entity) the disclosure statement must adequately set out or explain the following (if relevant):
- (a) who will and will not be allocated **securities**;
 - (b) the rights and obligations attaching to the **securities** being allocated, including voting rights and rights to participate in the reserves and profits;
 - (c) the class and approximate number of **securities** being allocated;
 - (d) the allocation formula for the **securities** (including the implications of any undersubscription or oversubscription of **securities** offered), including, without limitation:
 - (i) the manner in which the allocation formula will apply as between members; and
 - (ii) the basis on which the allocation formula has been determined;
 - (e) if rights to **securities** are allocated — whether the rights are renounceable or non-renounceable;
 - (f) the consideration payable for the **securities**, including, if the **securities** are partly paid, any call dates and amounts payable on calls;
 - (g) if the allocation of **securities** is underwritten:
 - (i) the name of the underwriters;
 - (ii) the amount of the underwriting fee or commission payable;
 - (iii) details of clauses in the underwriting agreement that may affect the underwriter's rights and obligations under the underwriting agreement;
 - (h) whether the **securities** will be listed on a securities exchange or exempt market; and
 - (i) the implications of allocation of **securities** for the structure of the **company**.
- (3) If the **proposed transaction** involves the modification or repeal, as set out in item (4) of the Table in Subclause A5-1, and the person proposing the modification or repeal is aware of any proposal to conduct any of the transactions set out in items (1) to (3) of the Table in Subclause A5-1(1), then the disclosure statement must disclose the matters set out in Subclause A5-6(1) and Subclause A5-6(2) in relation to:
- (a) the proposed modification or repeal; and
 - (b) each proposed transaction set out in items (1) to (3) of the Table in Subclause A5-1(1) of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).

A5-7 Director's Statement

The director's statement must contain:

- (a) a statement:
 - (i) recommending that the **proposed transaction** be approved or not approved, and giving reasons for the recommendation; or
 - (ii) giving reasons why a recommendation is not made;
- (b) a statement whether the director proposes to approve or not approve the **proposed transaction**;
- (c) a statement confirming that neither the director nor any **associate** of the director will receive any pay, other valuable consideration or any other benefit in connection with the **proposed transaction** other than as disclosed in the disclosure statement; and
- (d) particulars of any agreement between the director and any other person in connection with, or conditional upon, the outcome of the **proposed transaction**.

A6-8 Independent Expert's Report

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

Division 3 — Postal Ballot

A5-9 Appointment of Returning Officer

- (1) The **board** must appoint as returning officer for the ballot a person having the qualifications, experience or standing appropriate for appointment.

- (2) The returning officer may, if necessary, appoint 1 or more persons to act as assistant returning officers or clerical assistants.
- (3) A member is not eligible to be appointed as a returning officer or assistant returning officer.
- (4) The returning officer may delegate any of the returning officer's functions in this Division to an assistant returning officer having the qualifications, experience or standing to exercise those functions.
- (5) A person ceases to hold office as a returning officer or assistant returning officer if the person:
 - (a) dies; or
 - (b) resigns by notice of resignation delivered to the **company**; or
 - (c) is removed from office by the members.

A5-10 Roll

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

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

A5-11 Notice of Proposed Postal Ballot

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

A5-12 Postponement of Closing Date

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

A5-13 Printing of Ballot Papers

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

A5-14 Postal Voting Procedures

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

A5-15 Distribution of Ballot Papers

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

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

A5-16 Replacement of Ballot Papers

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

A5-17 Voting

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

A5-18 Appointment of Scrutineers

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

A5-19 Scrutiny

- (1) As soon as practicable after the ballot closes, the returning officer must check, scrutinise and deal with the ballots in accordance with the postal voting procedures.
- (2) A ballot paper is informal if:
 - (a) it is not authenticated as required by the postal voting procedures;
 - (b) it has not been completed so as to show a vote.

A5-20 Counting of Votes

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

Appendix 6 — Director Nominations Committee

A6-1 Appointment of Director Nominations Committee

- (1) The **board** must appoint at least 1 person to form the **Director Nominations Committee**.
- (2) Employees of the **company** are not eligible to be appointed to the **Director Nominations Committee**.
- (3) Each person on the **Director Nominations Committee** must enter into an agreement with the **company** to keep confidential their assessments under Clause A6-2, during and after their appointment.

A6-2 Role of Committee

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

A6-3 Duty of Confidentiality

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