



Hunter United Employees' Credit Union Ltd

ACN: 087 650 182

CONSTITUTION



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Preamble

Hunter United Employees' Credit Union 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

Membership and Member Shares

How to become a member

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

How many member shares the company may issue a person

2. Subject to the exception in Principle 3, the company may only issue one member share to any person.
3. A trustee may be issued 1 member share in the trustee's own right, and 1 member share as trustee.

Voting

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

Dividends and Surplus

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

Redemption and Transfer

8. 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.
9. Subject to the exceptions in Principle 10, member shares may not be transferred.
10. A trustee may transfer the member share that the trustee holds on trust.

Accumulation of Securities

11. 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

12. 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.



Division 1 – Introductory Matters

1.1 Definitions

In this Constitution, unless the context requires otherwise:

ADI refers to an authorised deposit - taking institution and means a body corporate that **APRA** has authorised to conduct banking business in Australia under *the Banking Act 1959 (Cth)*

AGM means the annual general meeting of the **company**

Appointed Director means a **director** for the time being of the **company** who the **board** appoints in accordance with Rule 13.4(1)

APRA means the Australian Prudential Regulation Authority

Board means the board of **directors**

Corporations Act means the Corporations Act 2001

Company means Hunter United Employees' Credit Union Limited (ACN 087 651 143)

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

Direct vote means a vote delivered to the **company** by such means as approved by the **board**

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

Elected Director means a **director** for the time being of the **company** appointed by **members** under Rule 13.3 or by the **board** under Rule 13.5

Financial Accommodation means:

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

Fit and Proper Policy means the policy adopted by the **board** in relation to the fitness and propriety of **directors**, senior managers and auditors as required by the **prudential standards**

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**



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 member share as described in Appendix 2, Division 1

Minor means a **person** who has not attained the age of 18 years

Nominations committee means a committee (however named) that is appointed by the **board** to, amongst other things, assess the fitness and propriety of candidates for election as **director** under Rule 13.3

Person includes a body corporate as well as an individual

Prudential Standard means:

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

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

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

1.2 Interpretation

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

- a) the singular includes the plural and vice versa;
- b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
- c) words and expressions defined in the **Corporations Act** have the same meaning in this Constitution;
- d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
- e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
- f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument;
- 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; and
 - h) a reference to 'in writing' is a reference to any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile and email transmission and documents in electronic form.
- (2) The notes to this Constitution are for purposes of convenience only and do not affect the interpretation of this Constitution. The notes do not form part of this Constitution and may be removed or modified without the company complying with the Corporations Act requirements that apply to removal or modification of constitutional provisions.

1.3 Time

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

1.4 Replaceable Rules do not Apply

The replaceable rules in the **Corporations Act** 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 give 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** giving 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 in the Register of Members from time-to-time or at any alternative address nominated by the **member**, or at any fax number or electronic address nominated by the **member**.

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



- (4) A **person** may give a notice or other document to another **person** in any of the ways set out in column 2 of the table. The other **person** is taken to be given the notice at the time set out in column 3:

Column 1	Column 2	Column 3
<i>Delivery Method</i>		<i>Time Person Receives Notice</i>
1	Hand delivering the notice personally	The notice is taken to be given: <ul style="list-style-type: none"> 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 notice is taken to be given on the third business day after posting
3	Sending the notice by facsimile transmission	The notice is taken to be given: <ul style="list-style-type: none"> i. if sent before 5:00pm on a business day — on that business day ii. if sent after 5:00pm on a business day — on the next business day iii. if sent on a day other than a business day — on the next business day <p>This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful</p>
4	Sending the notice by electronic means	The notice is taken to be given: <ul style="list-style-type: none"> i. if sent before 5:00pm on a business day — on that business day ii. if sent after 5:00pm on a business day — on the next business day iii. if sent on a day other than a business day — on the next business day

- (5) If a **person** gives 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** gave 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 rule 2.2 is a requirement of the Principles of Mutuality.

2.1 Objects

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

2.2 Customers must be Members

- (1) Subject to Subrule (2) the **company** may only provide **financial accommodation** to its **members**.
- (2) Subrule (1) does not apply to the following **persons** who are not **members**:
 - a) bodies that do not have the power to acquire, or that the law prohibits from acquiring, the **company's** shares;
 - b) **ADIs**; or
 - c) any **person** or class of **persons** as determined by the **board** from time to time in its absolute discretion.



Division 3 – 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** applies for a **member share**; and
 - b) the person pays the **subscription price**, if any, 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 Rules 9.3, 10.1, 10.2 and 10.3.

- (2) The **board** has an absolute discretion in exercising the **company's** power to admit a **person** as a **member** without any obligation to give a reason for not offering membership or not admitting a **person** as a **member**.
- (3) When the **company** admits a **person** as a **member**, the **company** must:
 - a) issue the **member share** to the person;
 - b) enter the **person's** particulars in the Register of Members as required by the **Corporations Act**; 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**, and its power to reject an application for membership, to a committee of **directors**, a **director**, or an officer or officers of the **company**. The delegation must not include authority to further delegate the power.

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**.
- (9) A joint **member** is regarded as one **member**, regardless of the number of **persons** who may constitute that joint **member**.
- (10) If one of the **persons** constituting a joint **member** dies, the **company** will recognise only the survivor or survivors of the **persons** constituting the joint **member** as being entitled to the deceased **person's** interest in the joint **member's member share**. The **company** may require the survivor or survivors to produce such evidence of the deceased's death as it sees fit.

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 s 169(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 Rules 4.2, 4.3 or 4.4;
- b) 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;
- c) if the **member** is a body corporate — the **member** is deregistered or dissolved; or
- d) 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 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 repaid all **financial accommodation**.

4.3 Termination by the Company

- (1) The board may redeem a member's member share if:
 - a) the **member** fails to discharge the **member's** obligations to the **company**;
 - b) the **member** is guilty or suspected of conduct that could reasonably be considered to be detrimental to the **company**;
 - c) the **member** obtains membership by misrepresentation or mistake; or



- d) the **member** has more than one **member share** (and if so, the **board** may determine which additional **member shares** to redeem to ensure that the **member** has only one **member share**).
- (2) The **board** may delegate its power to redeem a **member's member share** under Subrule (1) to a committee of **directors**, a **director**, or an officer or officers of the **company**. The delegation must not include authority to further delegate the power to redeem a **member's member share**.
- (3) A **member's member share** is redeemed under this Rule 4.3 upon:
 - a) the **board** resolving that the **member's member share** be redeemed; or
 - b) a **person** or **persons** to whom the **board** has delegated its power under Subrule (2) making a record of a decision that the **member's member share** be redeemed.
- (4) The **company** must give written notice that the **member's member share** may be redeemed under this Rule 4.3 to the **member** at least 14 days before the **board**, or a **person** or **persons** to whom the **board** has delegated its power under Subrule (2), makes a decision as to whether to redeem the **member's member share**. The notice must state whether it is proposed that the redemption will be by **board** resolution or by a decision made by a **person** or **persons** to whom the **board** has delegated its power under Subrule (2).
- (5) If a notice given to a **member** under Subrule (4) states that it is proposed that the redemption will be by a decision made by a **person** or **persons** to whom the **board** has delegated its power under Subrule (2), the **member** may, by written notice given to the **company** prior to the redemption of the **member's member share**, require that the matter be considered by the **board**. If a **member** gives such notice the **member's member share** may only be redeemed by **board** resolution.
- (6) At the time the **board** considers a resolution to redeem a **member's member share** under this Rule 4.3, the **member** is entitled:
 - a) to be present with or without the **member's** legal representative; and
 - b) to be heard, either in **person** or through the **member's** legal representative.
- (7) On redeeming a **member's member share**, the **company** may pay the amount payable on redemption of the **member's member share** to the **member** by either:
 - a) sending a cheque to the **member's** address as set out in the Register of Members;
 - b) crediting any of the **member's** accounts with the **company**, at the time the **member's member share** is redeemed; or
 - c) crediting the amount to a sub-account in the name of the **member** in a general account maintained by the **company** for the purposes of holding dormant account monies and/or general redemption proceeds for affected **members**.

4.4 Termination Where Accounts Dormant or Membership Inactive

- (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 **board** may determine that a **member's deposit** account(s) is dormant if:
- the member has not initiated any transactions in relation to any **deposit** account for at least 12 months before the date of the resolution; and
 - the **company** has given the **member** written notice stating that, unless the **member** gives to the **company** a written notice within 1 month of the written notice being given by the **company** stating that the **member** wishes the account(s) to remain open, the **company** intends to declare the account(s) dormant, close the account(s) and redeem the **member's member share**; and
 - the **company** does not receive a written notice from the **member** required under Rule 4.4(2)b).
- (3) The **board** may determine a **member** as inactive if:
- the **member** has not had any deposit or other account open with the **company** for a continuous period of 12 months; and
 - the **company** has given the **member** written notice stating that, unless the **member** gives to the **company** a written notice within 1 month stating that the **member** wishes to remain a **member** of the **company**, the **company** intends to redeem the **member's share**; and
 - the **company** does not receive a written notice from the **member** required under Rule 4.4(3)b).
- (4) The **company** may redeem the **member's member share** on the **board's** determination under Rule 4.4(2) that a **member's** deposit account(s) is dormant (a "**dormancy declaration**") or upon the board's determination under Rule 4.4(3) that the **member** is inactive (an "**inactive declaration**").
- (5) If the **company** redeems a person's **member share** as a result of a **dormancy declaration**, the person may require the **company** to reinstate the person's **deposit** account 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** account:
- the **company** must reinstate the person's **deposit** account as soon as practicable; and
 - 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.
- (6) In this Rule 4.4 "transaction" in a **member's deposit** account with the **company** means a debit or credit to the account, other than for:
- the payment of interest by the **company**;
 - the charging of a fee by the **company**; or
 - any other transactions initiated by the **company**.
- (7) Upon redemption of a **member share** as a result of a **dormancy declaration** or an **inactive declaration**, the **company** must pay the amount payable on redemption of the **member share** by either:



- a) sending a cheque to the **member's** address as set out in the Register of Members;
 - b) crediting any of the **member's** accounts (if applicable) with the **company**, at the time the **member's member share** is redeemed; or
 - c) crediting the amount to a sub-account in the name of the **member** in a general account maintained by the **company** for the purposes of holding dormant account monies and/or general redemption proceeds for affected **members**.
- (8) The **board** may delegate its power to determine under Subrules (2) and (3), and/or its power to redeem a **member's member share** under Subrule (4) to a committee of **directors**, a **director**, or an officer or officers of the **company**. The delegation must not include authority to further delegate the relevant power.
- (9) A **member's member share** is redeemed under this Rule 4.4 upon:
- a) the **board** resolving that the **member's member share** be redeemed; or
 - b) a **person** or **persons** to whom the **board** has delegated its power under Subrule (9) making a record of a decision that the **member's member share** be redeemed.

Banking Legislation Commentary

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



Division 5 – Issue of Shares

5.1 Class of Shares

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

5.2 Board Power to Issue Shares

The **board** may exercise the **company's** power to issue shares.

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 1 **member share** to any **person**. However, the **company** may issue to a trustee:

- a) 1 **member share** to the trustee in the trustee's own right; and
- b) 1 **member share** to the trustee as trustee.

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

5.4 No Share Certificates for Member Shares

Unless required by law to do so, the **company** will not issue share certificates in respect of **member shares**.



Division 6 – Calls, Forfeiture and Liens

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.

6.1 Payment of Calls on Shares

- (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 Subrule 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:
- the amount of the dividend;
 - the time for payment of the dividend; and
 - 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 the share, the **board's** determination under Subrule (1) is effective only if the **general meeting** approves the dividend before the time for payment of the dividend arrives.

The **general meeting** may not vary the **board's** determination.

Corporations Act Commentary

Section 254V(1) provides that the 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

- (1) 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:
- in amount; and
 - in the method of payment (whether cash, securities, assets or any combination of them).
- (2) This Rule 7.2 does not apply to **member shares**.

7.3 Interest on Dividends

Interest is not payable on a dividend.



Division 8 – Share Certificates

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

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.

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) This Rule 10.1 does not apply when one of the **persons** constituting a joint **member** dies.
- (2) On the death of a **member**, the **board** 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. The **board** will determine the information that is required to establish an entitlement to the shares.
- (3) If the personal representative or other **person** (as the case may be) gives the **board** the information it requires to establish an entitlement to be registered as holder of the **member's** shares, the personal representative or other **person** 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

If the trustee of a bankrupt **member's** estate gives the **company** 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.

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.

10.3 Transmission of Shares on Mental Incapacity

If a **person** entitled to shares because of a **member's** mental incapacity gives the **company** the information it reasonably requires to establish the **person's** entitlement to be registered as a holder of the **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, to each **member** to whom notice of the meeting was given.
- (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 10 **members** present in person, by proxy or body corporate representative.



- (2) If a quorum is not present within 30 minutes after the time for the **members'** meeting set out in the notice of meeting:
- a) if the meeting was convened on the requisition of **members** – it is automatically dissolved; or
 - b) otherwise – 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:
 - i. if the date is not specified — the same day in the next week;
 - ii. if the time is not specified — the same time; and
 - iii. 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 15 minutes of the appointed start of the meeting, or declines to act:

- c) the **directors** present may elect a **director** present to chair the meeting; or
- d) if the **directors** do not make the election or there are no **directors** present, the **members** may elect a **member** present to chair the meeting.

11.4 Technology

- (1) The **company** may hold a meeting of **members** at more than one venue using any technology that gives the **members** as a whole a reasonable opportunity to participate. For the purposes of Rule 11.3, a member will be taken to be present in person if they are present at one of the venues.
- (2) If, before or during a meeting of **members** any technical difficulty occurs where all **members** may not be able to participate, the Chair may:
 - a) adjourn the meeting until the difficulty is remedied; or
 - b) where a quorum remains present (in the venue at which the Chair is present in person) and able to participate, subject to the **Corporations Act**, continue the meeting.



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 **members’** meeting votes on a resolution, 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.
- (5) On a show of hands, each **member** present in person and each other person present as a proxy or body corporate representative has 1 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 **members'** meeting at which the representative may exercise the **member's** rights.
- (2) In addition to the rights and powers a **member's** representative may exercise under the **Corporations Act**, the representative may exercise the **member's** right to vote in a ballot to appoint **directors** by election.

12.5 Proxies

Corporations Act Commentary

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

- (1) The **board** may determine the form of proxy document from time-to-time.
- (2) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
 - a) the **member's** name; and
 - b) the proxy's name or the name of the office that the proxy holds.
- (3) 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;
 - 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 Direct Voting

- (1) The **board** may determine:
 - a) that **members** entitled to attend and vote at a **members'** meeting may cast a **direct vote**;
 - b) the form, method and timing of giving a **direct vote** in order for the vote to be valid at a meeting;
 - c) whether **direct votes** are counted where the vote is by show of hands.
- (2) A valid **direct vote** cast by a **member** has the same effect as if the **member** had cast the vote in person at the meeting.

12.7 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

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 an ADI to have at least 5 directors.

- (1) The **company** must have not less than five **directors** comprising:
 - a) such number of **elected directors** as determined by the **board** from time to time; and
 - b) not more than two **appointed directors**,
the majority of whom must be **elected directors**.
- (2) In addition, the **board** may appoint the **company's** chief executive officer as **director** under Rule 13.4(2).

13.2 Eligibility to be a Director

An individual is eligible to be a **director** if the **person**:

- a) is a **member**;
- b) is not a current employee of the **company** and has not been an employee of the **company** in an executive capacity within the 3 year period immediately prior to:
 - i. for appointment by **members** under Rule 13.3 – the closing of nominations for election;
 - ii. for appointment by the **board** under Rule 13.4(1) or Rule 13.5 – the date of appointment,but this paragraph b) does not apply to the **company's** chief executive officer in relation to appointment as **director** under Rule 13.4(2);
- c) has not had a personal representative or trustee appointed to administer the **person's** estate or property because of their mental incapacity;
- d) is not a **minor**;
- e) is not disqualified or prevented by law from being a **director** of the **company**; and
- f) is of appropriate fitness and propriety to be and act as a **director**, by reference to the **fit and proper policy**.



Corporations Act Commentary

Section 201B(1) provides that only individuals (not bodies corporate) who are at least 18 years of age 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.

13.3 Appointment by Members — Election

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

13.4 Appointment by Board

- (1) Subject to Rule 13.1(1), the **board** may, by resolution at any time, appoint a **person** as an **appointed director**.
- (2) The **board** may, by resolution at any time, appoint the **company's** chief executive officer as a **director**.
- (3) A **board** resolution appointing an **appointed director** or the chief executive officer as a **director** must specify the **director's** term of office.



13.5 Appointment by Board — Casual Vacancies

- (1) The **board** may appoint a **person** to be a **director**.
 - a) if an **elected director's** office becomes vacant other than because the **director's** term of office has ended; or
 - b) if for any reason, the number of **elected directors** is less than the number determined under Rule 13.1(1)a).

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

- (2) The term of office for a **director** appointed to fill a vacancy under paragraph (1)a) ends:
 - a) if a **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; or
 - b) otherwise — at the end of the next AGM after the **director's** appointment.
- (3) The term of office of a **director** appointed to fill a vacancy under paragraph (1)b) ends at the end of the next AGM after the **director's** appointment.

13.6 Term of Office

- (1) Subject to the **Corporations Act**, an **elected director's** term of office:
 - a) starts at the end of the AGM at which the **director's** election is announced; and
 - b) ends at the end of the third AGM after the AGM at which the **director's** election is announced.
- (2) Subject to the **Corporations Act** and Subrule (3), the term of office of an **appointed director** or the chief executive officer as a **director** starts at the time of the **board** resolution appointing the **person** as a **director** and ends at the end of the term specified in the **board** resolution appointing the **person** as a **director**.
- (3) Subject to the **Corporations Act** the term of office of the chief executive officer as a **director** ends if and when the **person** ceases to be the chief executive officer of the **company**.
- (4) A person is not eligible to be elected as **elected director** under Rule 13.3 if at the time of his or her election his or her cumulative period in office would be 9 years or more from the time he or she was first elected, re-elected, or appointed after 1 November 2010.
- (5) A person who is ineligible to become or remain an **elected director** in accordance with Subrule (4) is not prevented from being an **appointed director** in accordance with Rule 13.4.
- (6) Excluding a **director** who is the **company's** chief executive officer appointed **director** under Rule 13.4(2), the maximum cumulative period a person may serve as a **director**, whether as an **appointed director** or an **elected director**, is 12 years from the time he or she was first elected, re-elected, or appointed after 1 November 2010. The **board** may allow the **director** to remain in office until the end of the first Annual General Meeting of the **company** held on or after the maximum period is reached.



13.7 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 paragraphs a) to e);
- c) is absent from 3 consecutive ordinary meetings of the **board** without leave; or
- d) is 3 months or more in arrears in relation to money due to the **company** and has failed to make arrangements for payment satisfactory to the **company**;
- e) holds office as **director** in excess of the maximum period permitted under Rule 13.6(6), subject to the **board's** power under that Rule to defer the vacancy until the **company's** Annual General Meeting.

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.

13.8 Resignation

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

13.9 Nominations Committee

The **board** must appoint a **nominations committee**.



Division 14 – Director’ 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

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

14.3 Delegation

- (1) The **board** may delegate any of its powers to any committee or any other **person** or **persons**, subject to Rule 3.2 and Subrules 4.3(2) and 4.4(8). 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 – Director’ Meetings

15.1 Calling and Conduct of Board Meetings

- (1) The Chair, any 2 **directors** or the **secretary** (upon the authority of the Chair or any 2 **directors**) 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 a majority of **directors** 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**;
 - b) the **board** may adjourn the meeting to a date within 2 weeks of the adjourned date; and
 - c) the **board** may conduct business by circulating resolutions under Rule 15.5.

15.3 Chair and Deputy Chair of the Board

- (1) The **board** may appoint a **director** to chair its meetings and one other **director** as Deputy Chair. The **board** may determine the period for which the **directors** are to be the Chair and Deputy Chair. The **board** may remove the Chair and/or Deputy Chair from the position of Chair or Deputy Chair at any time.
- (2) The **board** must elect a **director** present to chair a meeting (or part of it) if neither the Chair nor the Deputy Chair is present within 30 minutes of the time appointed for a meeting or neither is willing to act.

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. In the event of an equality of votes the resolution is not passed.
- (2) The Chair does not have 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 **directors** entitled to vote on the resolution (and not being less than the number required for a quorum for a **board** meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (2) Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.



- (3) The resolution is passed when the last **director** to constitute a majority of **directors** signs.
- (4) A statement sent electronically by a **director** to the **secretary** that he or she is in favour of a resolution under Rule 15.5(1) is taken to be a document containing that statement and duly signed by the **director**. Such document is taken to have been signed by the **director** at the time of its receipt.

15.6 Committees of Directors

- (1) Subject to Rule 15.6(2) the **board** may establish one or more committees consisting of such number of **directors** as the **board** thinks fit.
- (2) The **board** will establish any committee which it is required to establish to comply with any **prudential standard** or law which applies to the **company**. Paragraphs (3), (4), (5) and (6) of this Rule 15.6 shall not apply to any such committee to the extent that they are inconsistent with the requirements of any such **prudential standard** or law.
- (3) The **board** may appoint one of their number as Chair of a committee.
- (4) Subject to any restrictions that the **board** imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (5) Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.
- (6) The Chair does not have a casting vote in addition to his or her deliberative vote.

15.7 Technology Meeting of Directors

- (1) A **board** meeting may be called or held using any technology consented to by all the **directors**. The consent may be a standing one. A **director** may only withdraw their consent within a reasonable period before the meeting.
- (2) A **board** meeting held solely or partly by technology is treated as held at the place at which the greatest number of the **directors** present at the meeting is located or, if an equal number of **directors** is located at more than 1 place, at the place where the Chair of the meeting is located.
- (3) If, before or during a meeting, any technical difficulty occurs where one or more **directors** cease to participate, the Chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of **directors** remains present, continue the meeting.



Division 16 – Conflicts of Interest

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

Corporations Act Commentary

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

- (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) 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) In any financial year for the **company**, the remuneration of **directors** (other than the chief executive officer if appointed as **director**) may not exceed the aggregate amount last fixed by ordinary resolution at a **general meeting**.
- (2) The **board** may determine the allocation of the aggregate amount of remuneration among the **directors**. If the **board** does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the **directors**.
- (3) The expression “remuneration” in this Rule 17.1 does not include any amount which may be paid by the **company** under Rule 17.2.
- (4) The **company** may pay the chief executive officer such remuneration as determined by the **board**, whether or not the chief executive officer is appointed as **director**.

17.2 Travelling Expenses and Insurance

- (1) In addition to any remuneration to which a **director** may be entitled, the **company** may also pay:
 - a) the **director's** travelling and other expenses that they properly incur:
 - i. in attending **board** meetings or any meetings of committees of **directors**; and
 - ii. in attending any **members'** meetings; and
 - iii. otherwise in connection with the **company's** business; and
 - b) subject to the **Corporations Act**, 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.

- (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 Seal

- (1) The **board** is to provide for the safe custody of the seal.
- (2) The seal is to be used only by the authority of the **directors**.
- (3) The **board** may authorise:
 - a) 2 directors; or
 - b) a director and a secretary, or
 - c) such other **persons** as the **board** appoints,to witness the affixing of the seal on a document of a class specified in the resolution.

18.2 Secretary

Subject to Rule 18.3, the **board** may determine a **secretary's** terms of appointment, powers, duties and remuneration. At any time, the **board** may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

18.3 Resignation of Secretary

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



Appendix 1 — Objects

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.



Appendix 2 — Shares

Division 1 — Member Shares

A2-1 Subscription Price

The **subscription price** for a **member share** is \$nil.

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) Subject to subclause (3), 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) Subject to subclause (3), 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) despite paragraph (a), a representative of a body corporate member can vote both as a **member** and as a representative of the body corporate and a trustee can vote both as a **member** and a trustee.
- (3) A **member** who is a minor has no right to vote.



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 one or more of the following conditions are satisfied:
 - (a) the **member** has given the **company** notice requesting termination of the **member's** membership of the **company** under Rule 4.2;
 - (b) the **board** has resolved to terminate the **member's** membership of the **company** under Rule 4.3; or
 - (c) the **board** has determined that, under Rule 4.4,:
 - i. the **member's deposit** accounts with the **company** are dormant; or
 - ii. the **member** is inactive.
- (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 Transfer of Member Shares

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



trustee.

A2-7 Entitlement to Exercise Vote – New Members

The entitlement of a holder of a **member share** to vote may not be exercised if the **member** was not a **member**.

- (a) In relation to an election of **directors** – on the day before nominations for the election of **directors** closed; and
- (b) In relation to a **general meeting** - at least 7 days before notice of the **general meeting** was given.



Appendix 3 — Election of Directors

Division 1 – General Procedures

A3-1 Election

- (1) An election of **directors** is held by secret ballot to which the provisions of this Division apply.

A3-2 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;
 - (b) declare that the **candidate** is at least 18; and
 - (c) be signed by the nominating **members** and the **candidate**.
- (4) Subject to Rule 13.6(4), a retiring **director** may stand for re-election without nomination by **members** by giving notice of self-nomination to the returning officer before nominations close pursuant to subclause A3-2(2) (and will then be a **candidate**) but the retiring **director** must be eligible to be a **director** under Rule 13.2. A retiring **director** who becomes a **candidate** is subject to all the requirements of this Appendix 3 applying to **candidates** other than the requirement to be nominated by **members**.
- (5) 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 **nominations committee** with all information and documentation that the **nominations committee** reasonably requests to assess the fitness and propriety of the **candidate** to be and act as a **director** by reference to the **fit and proper policy**,
 - (c) provide the **nominations committee** with all information and documentation that the **nominations committee** reasonably requests to confirm the **candidate** satisfies all eligibility requirements for election as a **director**.
- (6) If the **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**.

A3-3 Proceeding with Election

- (1) If the number of **candidates** is equal to or less than the number of positions to be filled:
 - (a) the **general meeting** may appoint each **candidate** as a **director** by passing a separate resolution at the AGM; and
 - (b) the election process otherwise set out in this Appendix is discontinued.
- (2) If the number of **candidates** is more than the number of positions to be filled, the election process set out in this Appendix will apply.

A3-4 Appointment of Returning Officers

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

A3-5 Conduct of ballot

- (1) Voting in the election of **directors** will be conducted by ballot according to:
 - (a) if the **board** has approved **voting procedures** to apply to the election – those **voting procedures**;
 - (b) otherwise – the postal ballot procedures set out in Division 3 of this Appendix.

A3-6 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 ballots and reject informal ballots;
 - (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) The **secretary** must announce the results of the ballot at the AGM.
- (3) 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.

A3-7 Voting System

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

A3-8 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.

Division 2 – Voting Procedures

A3-9 Voting Procedures

- (1) The **board** may approve **voting procedures** to apply to the election of **directors**. The **board's** approval may be standing approval.
- (2) To avoid any doubt, the **voting procedures** may allow for **members** to cast votes in the ballot by electronic means.
- (3) In determining the **voting procedures** the **board** must take reasonable steps to address the following matters:
 - (a) each **member** entitled to vote should have a reasonable opportunity to participate in the ballot;
 - (b) precautions to ensure that each **member** may only vote once in the ballot;
 - (c) procedures enabling the returning officer to detect fraud or impropriety in the voting process;



- (d) procedures to protect the anonymity of the voter;
 - (e) to the extent applicable – provisions for issuing a duplicate ballot when the original has been lost or spoiled;
 - (f) rules to apply to determine if a ballot is informal;
 - (g) procedures for receiving, checking, scrutinising and counting votes cast;
 - (h) the conduct, duties and responsibilities of the returning officer;
 - (i) the conduct, duties and responsibilities of scrutineers; and
 - (j) the retention and destruction of documents and records relating to the ballot after the election.
- (4) The **mutual** must provide a copy of the **voting procedures**:
- (a) to each **candidate**;
 - (b) to a **member** on request.

A3-10 Application of Voting Procedures

If **voting procedures** apply to the election of **directors** then:

- (a) the ballot opens on a day determined by the **board** that, other than for a ballot conducted at the AGM, is at least 21 days before the AGM;
- (b) the ballot paper, or other method under the **voting procedures** by which a **member** may cast a vote in the ballot, must list all the **candidates** in an order determined by the returning officer by lot;
- (c) a **member** may only cast a vote in the ballot in accordance with the **voting procedures**;
- (d) the ballot closes on a day and time determined by the **board** that, other than for a ballot conducted at the AGM, is on a date at least:
 - i. 14 days after the ballot opens; and
 - ii. 7 days before the AGM.

Division 3 – Ballot at AGM

A3-11 Application of Division

This Division 3 only applies to the election of **directors** if the **board** has not approved **voting procedures** to apply to the election.

A3-12 Appointment of Scrutineer

- (1) A **candidate** may appoint a scrutineer.
- (2) The duties and responsibilities of scrutineers are:



- (a) to observe the sorting, counting and recording of ballot papers;
- (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate **candidates**; and
- (c) to raise any query with the returning officer regarding any of the ballot papers.

A3-13 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**.

A3-14 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.

A3-15 Closure of the Ballot

The ballot closes at the time the returning officer specifies.

A3-16 Dealing with Ballot Papers

- (1) 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**.
- (2) The returning officer must destroy the ballot papers three months after the declaration of the ballot.