

NORTHERN INLAND CREDIT UNION LIMITED
ACN 087 650 422

CONSTITUTION

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Preamble

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

Customers Must be Members

1. Subject to the exceptions in Principles 2 and 3, a credit union may not accept a deposit from, or grant financial accommodation to, a person who is not a member.
2. A credit union 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 credit union's shares.
3. A credit union 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 a credit union may issue a person

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

Consideration paid for membership shares

7. A credit union may issue member shares as wholly paid or partly paid.
8. A credit union 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 credit union's members.

Dividends and Surplus

11. A member share may confer a right to participate in the credit union's profits through payment of dividends.
12. A member share must confer a right to participate in surplus when the credit union 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 credit union's constitution.
15. Subject to the exceptions in Principle 16, member shares may not be transferred.
16. A trustee for an unincorporated association may transfer the member share that the trustee holds on trust for the unincorporated association.

Additional Shares

Definition

17. All shares issued by a credit union other than member shares are additional shares.

Issue of additional shares only to members

18. A credit union may only issue additional shares to a person who has been a member of the credit union 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 credit union.

Dividends and Surplus

21. An additional share may confer the right to participate in the credit union's profits through payment of dividends.
22. An additional share may confer a right to participate in surplus when the credit union 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 credit union continuously for the past 6 months.

Accumulation of Securities

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

Directors

27. Only a member of a credit union may be a director of the credit union.

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

board means the board of *directors*

board nomination committee means the committee appointed by the board in accordance with Appendix 7

candidate means the person nominated to be a candidate for election as a *director* in accordance with A5.2 'Nominations' of Appendix 5

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

credit union means the company described in this Constitution

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

director means a director for the time being of the *credit union*

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 *credit union*);
- 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 *credit union* provides or enters in the ordinary course of its banking business

fit and proper policy means a written policy adopted by the *board* relating to the fitness and propriety of *directors*, senior managers and auditors of the *credit union*, complying with *prudential standard* or provision of law which is from time to time applicable.

general meeting means a general meeting of the *members*

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

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

member share means a share as described in Appendix 3 Part A.

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 *credit union* under the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth).

Banking Legislation Commentary: APRA may determine prudential standards under *Banking Act 1959* (Cth) s11AF. The Treasurer may make prudential regulations under *Banking Act 1959* (Cth) s11A. S12 and Schedule 1 of the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth) specify the APRA transitional prudential standards that apply to credit unions.

secretary means a secretary for the time being of the *credit union*

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

1.2 Interpretation

1.2.1 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 Law* 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.

1.2.2 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 credit union complying with the *Corporations Law* 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 *credit union's* registered office.

1.4 Replaceable Rules do not Apply: The replaceable rules in the *Corporations Law* do not apply.

1.5 Notices

1.5.1 This Rule applies to all notices and documents that the *Corporations Law* or this Constitution requires a party to this Constitution to send to another party to this Constitution.

Corporations Law Commentary: parties to the Constitution - credit union, its members, directors and secretaries: see s140(1).

1.5.2 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.

1.5.3 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 *credit union* - at its registered office or such other address as the *credit union* 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.

1.5.4 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 |
|--|--|
| Hand delivering the notice personally | The other person receives the notice: <ul style="list-style-type: none">i. if hand delivered before 4:00pm on a <i>business day</i> - on that <i>business day</i>ii. if hand delivered after 4:00pm on a <i>business day</i> - on the next <i>business day</i>iii. if hand delivered on a day other than a <i>business day</i> - on the next <i>business day</i> |
| Sending notice by prepaid post | The other person receives the notice on the third <i>business day</i> after posting unless it is actually delivered earlier |
| Sending the notice by facsimile transmission | The other person receives the notice: <ul style="list-style-type: none">i. if sent before 5:00pm on a <i>business day</i> - on that <i>business day</i>ii. if sent after 5:00pm on a <i>business day</i> - on the next <i>business day</i>iii. if sent on a day other than a <i>business day</i> - on the next <i>business day</i> This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful |
| Sending the notice by electronic means | The other person receives the notice: <ul style="list-style-type: none">i. if sent before 5:00pm on a <i>business day</i> - on that <i>business day</i>ii. if sent after 5:00pm on a <i>business day</i> - on the next <i>business day</i>iii. if sent on a day other than a <i>business day</i> - on the next <i>business day</i> 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 |

1.5.5 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 and limits on powers

Corporations Law Commentary: The *Corporations Law* provides that the credit union has the legal capacity and powers of an individual and of a body corporate: see s124. The *Corporations Law* allows the Constitution to set out the credit union's objects and to expressly limit the credit union's exercise of its powers: see s125. The statement of objects is optional. However, the limit on power in Rule 0 is a requirement of the Principles of Mutuality.

2.1 Objects: The *credit union* has the objects set out in Appendix 1.

2.2 Customers Must be Members: The *credit union* 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 *credit union's* shares; or
- b. *ADIs*.

DIVISION 3 Membership

3.1 Admission to Membership

Corporations Law Commentary: A person becomes a member of the credit union if the person agrees to become a member and the credit union enters the person's name in the Register of Members: see s 231.

3.1.1 Subject to any other Rule allowing admission of *members*, the *credit union* may admit a person as a *member* only if:

- a. if the *credit union* has a *common bond* - the person provides evidence, satisfactory to the *credit union*, that the person is eligible to be a *member* under the *common bond*;
- b. the person applies for a *member share*;

Note: The *credit union* 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, 10.2, 10.3 or 10.4.

3.1.2 The *board* has an absolute discretion in exercising the *credit union's* power to admit *members* without any obligation to give a reason for not admitting a person as a *member*.

3.1.3 When the *credit union* admits a person as a *member*, the *credit union* 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 Law*; 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 *credit union*. The delegation must not include authority:

- a. if the *credit union* has a *common bond* - to admit persons as either Approved Persons or Approved Bodies corporate as referred to in Appendix 2;
- b. to reject an application, such applications being forwarded to the *board* for consideration; or
- c. to further delegate the power to admit *members*.

3.3 Joint Members

3.3.1 The *credit union* may admit 2 or more persons eligible for admission under Subrule 3.1.1 as a joint *member* of the *credit union*.

3.3.2 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 *credit union* may determine the order in which their names appear in the Register of Members.

3.3.3 The person named first in the Register of Members is the primary joint *member*. The *credit union* 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*.

3.3.4 At any time, the joint *member* may give the *credit union* a notice requiring the *credit union* 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 *credit union* must change the Register of Member as soon as practicable after receiving the notice.

3.3.5 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.

3.3.6 The *credit union* may accept *deposits* from, or provide *financial accommodation* to, the joint *member* or to any person constituting the joint *member*.

3.3.7 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.

3.3.8 In this constitution, the joint *member* is taken to be a person separate to the persons constituting the joint *member*.

Corporations Law Commentary: *Corporations Law* recognises registration of joint members of a credit union. The joint members are taken to be a *single* member of the credit union; and 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 *credit union* can remove the *member's* name from the Register of Members if:

- a. the *credit union* redeems the *member's member share* under Rules 4.2, 4.3 or 4.4;
- b. the *credit union* 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 *credit union* registers the *member's* trustee in bankruptcy as the holder of the *member's member share* under Rule 10.3; or
 - iii. becomes mentally incapable and the *credit union* registers the *member's* trustee or guardian as the holder of the *member's member share* under Rule 10.4;
- e. if the *member* is a body corporate - the *member* is deregistered or dissolved; or
- f. if the *member* is a trustee for an unincorporated association - the *credit union* 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 *credit union* from accepting further *deposits* from or providing further *financial accommodation* to persons who cease to be *members*.

4.2 Member's Request for Termination

4.2.1 A *member* may request termination of membership but only upon withdrawing all *deposits* and repaying all *financial accommodation*.

4.2.2 If a *member* makes a request under Subrule (1), the *credit union* must redeem the *member's member share* as soon as practicable after receiving the request. However, the *credit union* 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

4.3.1 The *credit union* may redeem a *member's member share* by *board* resolution if:

- a. the *member* fails to discharge the *member's* obligations to the *credit union*;
- b. the *member* is guilty of conduct that the *board* reasonably considers to be detrimental to the *credit union*; or

c. the *member* obtains membership by misrepresentation or mistake.

4.3.2 The *credit union* must give notice of the proposed resolution under Subrule (1) to the *member* at least 14 days before considering the proposed resolution.

4.3.3 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.

4.3.4 On redeeming the *member share*, the *credit union* 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 *credit union*, at the time the *member share* is redeemed.

4.4 Termination Where Accounts Dormant

4.4.1 This Rule does not apply to a retirement savings account to the extent that the *Retirement Savings Account Act 1997* (Cth) provides otherwise.

4.4.2 The *credit union* 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.

4.4.3 The *credit union* must send notice of the proposed resolution under Subrule (1) 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.

4.4.4 On redemption of the *member share*, the *credit union* must pay the amount payable on redemption of the *member share* into the *member's* account.

4.4.5 If the *credit union* redeems a person's *member share* under this Rule, the person may require the *credit union* to reinstate the person's *deposit* accounts at any time before the *credit union* pays the money in the *deposit* account in accordance with the relevant unclaimed money legislation. If the person requires the *credit union* to reinstate the person's *deposit* accounts:

- a. the *credit union* must reinstate the person's *deposit* accounts as soon as practicable; and
- b. if the *credit union* has redeemed the *member's member share* - the *credit union* 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.

DIVISION 5 Issue of shares

5.1 Classes of Shares: The *credit union* may only issue *member shares*.

5.2 Board Power to Issue Shares: The *board* may exercise the *credit union's* power to issue shares to the exclusion of the *general meeting*.

5.3 Restrictions on Issue of Member Shares

5.3.1 The *credit union* 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*.

5.3.2 The *credit union* may only issue *member shares* in accordance with Subrule 3.1 (3).

5.3.3 The *credit union* may only issue 1 *member share* to any person. However, the *credit union* 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 *credit union* can issue a *member share* to a person who already constitutes a joint member. See Rule 3.3.

DIVISION 6 Calls, forfeitures and liens

6.1 Payment of Calls on Shares

Corporations Law Commentary: The *Corporations Law* 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 s254M.

6.1.1 This Rule applies if some or all of the *subscription price* for a share is payable on the *credit union* 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 *credit union* can only call up some or all of the *subscription price* for shares if the *credit union* becomes an externally-administered body corporate.

6.1.2 The *credit union* may call for payment of any amount of the unpaid *subscription price* for a share by *board* resolution. The *credit union* must give a *member* holding a share on which the *credit union* has made a call a notice setting out how much, when and how the *member* must make the payment. The *credit union* must give the notice at least 14 days before the time the *member* must pay the call.

6.1.3 The *credit union* may revoke or postpone a call on a share by *board* resolution. The *credit union* must give each *member* holding a share for which the *credit union* has revoked or postponed a call notice as soon as practicable after the *board* resolution.

6.1.4 In any proceeding to recover unpaid instalments, a *member* is conclusively presumed to be liable for a call if:

- a. the *credit union'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 *credit union* gave the *member* a notice in accordance with Subrule 2.

6.1.5 At any time, the *credit union* 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

6.2.1 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 *credit union* may have against the *member*.

6.2.2 The *member* must pay:

- a. the amount due on the share; and
- b. all costs and expenses that the *credit union* 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 *credit union* may waive all or part of the expenses payable under this Subrule by *board* resolution.

6.2.3 At any time while the amount payable under Subrule 2 remains unpaid in respect of a share, the *credit union* 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 the that date, the *member* will forfeit the share.

The date for payment must be at least 14 days after the date on which the *credit union* 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 *credit union* as at the date the *credit union* issues the default notice.

6.3 Forfeiture and Surrender

6.3.1 If a *member* does not comply with the default notice issued under Rule 6.2.3, the *credit union* 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.

6.3.2 The *credit union* 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.

6.3.3 The forfeited shares become the *credit union's* property. The *credit union* may redeem, sell or otherwise dispose of the forfeited shares on the terms and in the manner that the *board* determines.

6.3.4 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.

6.3.5 A *member* may surrender any share to which a default notice relates. The *credit union* may deal with surrendered shares in the same way as it deals with forfeited shares.

6.3.6 A *member* whose shares have been forfeited remains liable to pay the *credit union* the amounts due:

- a. less any amount that the *credit union* must pay the *member* on redemption of the shares; and
- b. less any amount that the *credit union* receives on sale or disposal of the forfeited shares.

6.4 Liens

6.4.1 The *credit union* may at any time exempt a share wholly or in part from this Rule by *board* resolution.

6.4.2 The *credit union* 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 *credit union*.

6.4.3 If an amount secured by a lien in Subrule 2 is presently due, the *credit union* 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 *credit union* may sell the share.

The date for payment must be at least 14 days after the date on which the *credit union* 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 *credit union* as at the date the *credit union* issues the sale notice.

6.4.4 If a *member* does not pay the amount due by the date stated in the sale notice under Subrule 3, the *credit union* may sell the shares on the terms and in the manner that the *board* determines. The *credit union* 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.

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

DIVISION 7 Dividends

Corporations Law Commentary: The *Corporations Law* states that dividends may be paid only out of profits: see s 254T.

7.1 Payment of Dividends

7.1.1 The *board* may determine that the *credit union* 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 *credit union* pays the dividend other than in cash, the *board* may fix the value of any securities issued or assets transferred.

7.1.2 If the terms of issue of 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 Law Commentary: s254V(1) provides that the credit union 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 Law Commentary: Credit unions do not have to issue certificates to members for member shares: see *Corporations Regulations* reg 12.08.08. However, credit unions that issue other classes of shares have to issue certificates for those other classes of shares: see s1096. A member whose certificate is lost or destroyed may apply to the credit union for a new certificate. The credit union 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 credit union with an indemnity: see s1089.

8.1 Share Certificates

8.1.1 This Rule does not apply in relation to *member shares*.

8.1.2 A *member* may require the *credit union* to issue to the *member* without charge 1 certificate for each class of shares in the *credit union* 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 credit union 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 *credit union* becomes the owner of the share transfer and has a right to exclusive possession of the share transfer.

9.3 Registration of Share Transfer

9.3.1 The *credit union* 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.

9.3.2 The *credit union* may refuse to register a share transfer unless:

- a. the shares are fully-paid;
- b. the *credit union* 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 *credit union*.

9.3.3 The transferor of shares remains the holder of those shares until the *credit union* enters the transferee's name as holder of those shares in the Register of Members.

Corporations Law Commentary: If a credit union 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 credit union's registered office: see s1093.

9.4 Powers of Attorney

9.4.1 The *credit union* 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.

9.4.2 The *credit union* 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 Transmissions and the Common Bond: The *credit union* may register a person as holder of a *member's* shares under this Division even though the person is not eligible to be a *member* under the *common bond*.

10.2 Transmission of Shares on Death

10.2.1 On the death of a *member*, the *credit union* 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.

10.2.2 If the personal representative gives the *board* the information it reasonably requires to establish an entitlement to be registered as holder of the *member's* shares, the personal representative may elect to:

- a. be registered as the holder of the shares; or
- b. apply to terminate the membership.

10.3 Transmission of Shares on Bankruptcy

Corporations Law Commentary: The *Corporations Law* sets out the rights of the trustee of the bankrupt's estate in relation to shares held by the bankrupt member, whether or not the trustee has become registered as holder of the shares. The trustee has the same rights as to dividend, transfer of shares and sale of share as the bankrupt member had. Furthermore, the Constitution cannot

override the trustee's rights: see s1091A.

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 *credit union* to register the trustee as holder of the *member's* shares.

10.4 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 *credit union* 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 Law Commentary - Holding a members' meeting: A members' meeting must be held at a reasonable time and place: see s249R. 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 s249S.

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. In the case of joint members, notice is given to the first named member in the register of members. See Subrule 3.3.3. The auditor must also receive the notice convening a general meeting and other communication members are entitled to receive: see s249K.

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 credit union; 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 s249L.

Auditor's right to attend: The Auditor has a right to attend any general meeting and to speak: see s249V.

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 credit union notice of a resolution that they propose to move at a general meeting: see s249N. This resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given: see s249O.

Members' request for statement to be distributed: A credit union must distribute a statement about a resolution or other matter to be considered at a general meeting as requested by a certain number of members: see s249P.

The AGM: A company must hold an AGM within 5 months after the end of its financial year: see s250N. The business of an AGM may include:

- consideration of the annual financial report, directors' report and auditor's report;
- election of directors;
- appointment of auditor;

The chair of the AGM must:

- allow members a reasonable opportunity to ask questions about, and to comment on, the management of the credit union: see s250S; 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 Law Commentary - Members' right to call a general meeting: A general meeting must be held if 100, or 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 s249D and 249F. In any case, members who hold at least 5% of the votes can call and arrange to hold a meeting themselves: see s249F.

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

11.2 Adjourning Meetings of Members

11.2.1 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.

11.2.2 The *credit union* must give notice of an adjourned *members'* meeting if the adjournment is for 1 month or more.

11.2.3 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

11.3.1 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.

11.3.2 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.

11.3.3 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.

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

DIVISION 12 Voting at Members' meetings

12.1 Voting

12.1.1 A resolution put to the vote at a *members'* meeting must be decided on a show of hands unless a poll is demanded.

12.1.2 Before a *member's* meeting votes on a resolution, the chair must inform the meeting:

a. how many proxy documents the *credit union* has received that validly appoint a person present at the meeting as proxy;

b. how many of these proxy documents direct the proxies how to vote on the resolution; and

c. how the proxies are directed to vote on the resolution.

12.1.3 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.

12.1.4 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 Law Commentary: s250L 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 s249Y(1). S250K states that a poll may be demanded on any question and that the demand may be withdrawn.

12.3.1 A poll cannot be demanded on any resolution concerning the election of a person to chair the *members'* meeting.

12.3.2 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.

12.3.3 The *members'* meeting may conduct other business even though a poll is demanded on a resolution.

12.4 Body Corporate Representatives

Corporations Law Commentary: s250D 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.

12.4.1 A *member* that appoints a body corporate representative must give the *credit union*:

a. if the *member* appointed the representative by board resolution - a certified copy of the board resolution appointing the representative; and

b. otherwise - a copy of the instrument appointing the representative,

as practicable after appointing the representative, and in any event before any *member's* meeting at which the representative may exercise the *member's* rights.

12.4.2 In addition to the rights and powers a *member's* representative may exercise under the *Corporations Law*, the representative may exercise the *member's* right to vote in a ballot to appoint *directors* by election.

12.5 Proxies

Corporations Law Commentary: s249X-250C set out members' powers to appoint proxies and the rights and obligations of proxies.

12.5.1 The *board* may determine the form of proxy document from time-to-time.

12.5.2 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.

12.5.3 A proxy does not have a right to vote on a show of hands.

12.5.4 If a *member* appoints the chair as the *member's* proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.

12.5.5 Unless the *credit union* 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 and vacation of office

13.1 Number of Directors

- a. The board may determine the number of directors provided that the number of directors is not less than 7 and not greater than 9 at any one time;
- b. At any time, there shall be 5 directors elected by the members under Rule 13.3 unless a casual vacancy occurs and a maximum of four directors appointed by the board under Rule 13.5.

Corporations Law Commentary: s201A(2) provides that credit unions must have at least 3 directors (not counting alternate directors) and that at least 2 must ordinarily reside in Australia. APRA's Prudential Standard APS 510 Governance made under the Banking Act requires that the board of an ADI must have a minimum of five directors at all times.

13.2 Eligibility to be a Director

13.2.1 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,
- c. is not disqualified or prevented from law from being or acting as a *director*; and
- d. is fit and proper to be and act as a director.

13.2.2 For the purposes of Rule 13.2(1)(d) a person is fit and proper to be and act as a *director* if the *board nomination committee* has conducted a fit and proper assessment of that person in accordance with the *fit and proper policy* and has determined that they are fit and proper to be and act as a *director*.

13.2.3 A person is not eligible to be appointed *director* if the *board nomination 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 *fit and proper policy*.

Corporations Law Commentary: s201B(1) provides only individuals (not bodies corporate) who are at least 18 may be directors. s201B(2) provides a person who has been disqualified from managing corporations under Part 2D6 may only be appointed a director if the appointment is made with ASIC's permission under s206F or the Court's leave under s206G. **Banking Act Commentary:** Under s19 it is an offence for a person to be a director of the Credit Union if the person is a disqualified person within the meaning of s20 of the Act. S20 provides that a person is disqualified from being a director of the credit union if: **a.** The person has been convicted of an offence against or arising out of: i. the Banking Act 1959 (Cth); ii. the Financial Sector (Collection of Data) Act 2001 (Cth); or iii. the Corporations Act 2001 (Cth), 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 section; **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 carried on the business of banking or insurance or otherwise deals in financial matters. S21(3) provides APRA 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 APRA makes it.

13.3 Appointment by Members — Election

13.3.1 Subject to Rule 13.1, the *members* may appoint a person who is eligible to be a director under Rule 13.2 by election held under the provisions of Appendix 5.

13.4 Appointment by Board — Casual Vacancies

13.4.1 The *board* may appoint a person to be a *director* in lieu of an elected *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 other reason, the number of elected *directors* is less than the minimum stipulated under Rule 13.1.

The *board* may only appoint a person who is eligible to be a *director* under Rule 13.2 and prior to the appointment has been assessed by the board nomination committee as a fit and proper person to hold the office of director.

13.4.2 The term of office for a *director* appointed to fill a vacancy in paragraph (1) (a) and (b) ends at the end of the next AGM after the *director's* appointment.

13.5 Appointment of Board

13.5.1 Subject to Rules 13.1 and 13.5(3) the *board* may, by resolution at any time, appoint a person as a *director*.

13.5.2 The term of office of a person appointed a *director* under Rule 13.5(1) is as the *board* determines and ends no later than by the end of the third AGM after the *director's* appointment.

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

13.6 Term of Office

13.6.1 Subject to the *Corporations Law* 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.

13.6.2 If the number of *directors* that *members* appoint, is more than a third of the number of *directors* on the *board*

- 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.

13.6.3 For purposes of Rule 13.6(2):

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

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;
- 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 *credit union* and has failed to make arrangements for payment satisfactory to the *credit union*.
- e.** ceases to be a *member*.
- f.** has a personal representative or trustee appointed to administer the *director's* estate or property because of their mental incapacity;
- g.** is the subject of an assessment by the *Board Nomination Committee* under the *fit and proper policy* which determines that he or she is not fit and proper to hold office as a *director*;
- h.** is the subject of a direction under section 23 of the Banking Act 1959 (Cth)
- i.** becomes a disqualified person as defined in section 20 of the Banking Act 1959 (Cth); or

- j. is disqualified from acting as a *director* under Part 2D.6 of the *Corporations Act*.
- k. seriously breaches directors duties owed to the *credit union*;
- l. breaches any of the *credit union's* rules for matters in which the director has a material personal interest;
- m. makes any serious or repeated disclosure of confidential information of the *credit union*; and
- n. makes any other serious or repeated breach of the *credit union's* published corporate governance principles.

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

Corporations Law Commentary: s203D provides for that the general meeting of a credit union may remove a director by ordinary resolution.

13.8 Resignation

13.8.1 A *director* may resign by giving the *credit union* notice of the *director's* resignation.

13.8.2 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 *credit union* receives the notice of resignation.

13.9 Alternate Directors

13.9.1 In this Rule, unless the context requires otherwise:

- *alternate* means a person that a *director* appoints as his or her alternate *director* under Subrule (2), but only in the person's capacity as the alternate *director*.
- *appointor* means the *director* who appoints an *alternate* under Subrule (2)

13.9.2 A person is eligible to be an *alternate* for a *director* if the person:

- a. is eligible to be a *director* under Rule 13.2;
- b. is not a *director*; and
- c. is not an *alternate* for another *director*.

13.9.3 A *director* (but not an *alternate*) may give the *credit union* a notice appointing a person eligible under Subrule (2) to be his or her *alternate*. The notice must set out:

- a. the name of the person to be appointed as *alternate*;
- b. the term of the *alternate's* appointment (or that the appointment is for an indefinite term);
- c. whether or not the *appointor* requires the *credit union* to give notices of *board* meetings to the *alternate*;

The notice of appointment only takes effect if the *board* approves the *alternate's* appointment.

13.9.4 The *alternate* is not the *appointor's* agent, but a *director* of the *credit union*. The *alternate* has all the duties, powers and rights of the *appointor* as a *director*. Except to the extent that this Rule provides otherwise, all references to *directors* in this Constitution include references to the *alternate*.

13.9.5 The *credit union* only has to give notice of *board* meetings to the *alternate* if the *appointor* has given the *credit union* a notice requiring it to do so.

Note: See Rule 15.1 in relation to notice of *board* meetings.

13.9.6 The *alternate* may only be present at meetings of *directors* at which the *appointor* is absent. The *alternate*:

- a. may be present and may vote on a matter even though the *appointor* has a *material personal interest* in the matter; and
- b. does not breach his or her duties to the *credit union* by reason of any matter considered or voted on at a meeting at which the *alternate* was absent because the *appointor* was present.

Note: See Rule 15.2 in relation to quorum at a *board* meeting. See Rule 15.4 in relation to voting on resolutions at *board* meetings. See Rule 16.2 in relation to *directors* not being present or voting on matters in relation to which they have a *material personal interest*.

13.9.7 The reference to 'all *directors*' in Rule 15.5 refers to:

- a. if the *appointor* notifies the *credit union* that the *alternate* can sign circulating resolutions instead of the *appointor* - the *alternate* and other *directors* but not the *appointor*;
- b. otherwise - the *appointor* and other *directors* but not the *alternate*.

13.9.8 The *credit union* must not provide remuneration to the *alternate* (in his or her capacity as *alternate*) except out of remuneration that it has allocated to the *appointor*. The *alternate* has no right to remuneration against the *credit union*. This does not affect any right to remuneration that the *alternate* may have against the *appointor*.

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

13.9.9 The *alternate's* office automatically becomes vacant if:

- a. the *appointor* revokes the *alternate's* appointment; or
- b. the *appointor's* office as a *director* becomes vacant (except where the *appointor's* term as a director ends at the end of an AGM under Rule 13.5 and the *members* re-elect the *appointor* as a *director* at that AGM).

The *alternate's* office may also become vacant in the circumstances set out in Rule 13.7 and Rule 13.8.

13.10 Directors' Cooperation in Implementation of Fit and Proper Policy: All *directors*, including *alternates*:

- a. agree to provide any assistance that the *credit union* needs to obtain information for the implementation of the *fit and proper policy* or any *prudential standard* or provision of law;
- b. consent to the provision of information by other persons in connection with the application to them of the *fit and proper policy* or any *prudential standard*, and waive all rights of action against any person so providing information in good faith; and
- c. waive all rights of action against the *credit union* in respect of acts or omissions done in good faith, in implementing or seeking to implement the *fit and proper policy*.

DIVISION 14 Directors' powers

14.1 Powers and Duties of the Board: The *board*:

- a. manages the *credit union's* business; and
- b. may exercise all the powers of the *credit union* except any powers that the *Corporations Law* 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 *credit union*. The *board* may authorise the application of signatures to negotiable instruments by machine or other facsimile method.

14.3 Delegation

14.3.1 The *board* may delegate any of its powers to any committee or any other person or persons, subject to Rule 3.2 and the application of the *fit and proper policy*. The *board* may permit the delegate to sub-delegate any powers delegated to them.

Corporations Law 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 s198D.

14.3.2 The *board* must establish policies for the guidance of delegates in the exercise of any powers so delegated.

14.3.3 Without limiting its powers, the *board* may appoint a person to be the *credit union'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 Law Commentary: s248D 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

15.1.1 A *director* or the secretary (upon the authority of a *director*) may call a *board* meeting by giving reasonable notice to every other *director*.

15.1.2 The *board* may meet, adjourn and otherwise regulate its meetings as it thinks fit.

15.2 Quorum of Board: 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.

15.2.1 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

15.3.1 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.

15.3.2 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

15.4.1 A resolution of the *board* must be passed by a majority of the votes cast by *directors* entitled to vote on the resolution.

15.4.2 The chair has a casting vote in addition to his or her deliberative vote.

15.5 Circulating Resolutions

15.5.1 The *board* may pass a resolution without a *board* meeting if all of the *directors* entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

15.5.2 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.

15.5.3 The resolution is passed when the last *director* signs.

15.6 Committees of Directors

15.6.1 The *board* may establish one or more committees consisting of such number of *directors* as the *board* thinks fit.

15.6.2 The members of a committee may appoint one of their number as chair of their meetings.

15.6.3 Subject to any restrictions that the *board* imposes, a committee may meet, adjourn and otherwise regulate its meetings as it thinks fit.

15.6.4 Questions arising at a meeting of a committee are to be determined by a majority of votes of those present and voting.

15.6.5 The chair does not have a casting vote in addition to his or her deliberative vote.

DIVISION 16 Conflicts of interest

Corporations Law 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

16.1.1 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 *credit union's* affairs:

- i. complies with the requirements of the *Corporations Law* in relation to disclosure of the nature and extent of the interest and its relation to the *credit union'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 Law*.

16.1.2 The *director* is not in breach of his or her duties to the *credit union* merely because he or she acts in matters that relate to the *director's* interest.

16.1.3 The *director* may vote on matters that relate to the *director's* interest.

16.1.4 In relation to any transactions that relate to the *director's* interest:

a. the transactions may proceed;

b. the *credit union* 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

16.2.1 This Rule applies if a *director* with a *material personal interest* in relation to a matter:

a. complies with the requirements of the *Corporations Law* in relation to disclosure of the nature and extent of the interest and its relation to the *credit union's* affairs; but

b. must not be present and vote on the matter under the *Corporations Law*.

Corporations Law Commentary: s195 provides that a director of a credit union 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 s195(2);
- ASIC approves the director being present: see s195(3); or
- the interest does not have to be disclosed: see s191.

16.2.2 The *director* is not in breach of duty to the *credit union* merely because he or she does not act in relation to the matter.

16.2.3 The *board* may vote on matters that relate to the *director's* interest in the *director's* absence.

16.2.4 In relation to any transactions that relate to the *director's* interest:

a. the transactions may proceed;

b. the *credit union* 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 *credit union*, 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 Law* in relation to disclosure of the nature and extent of the interest and its relation to the *credit union'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 Law*.

DIVISION 17 Remuneration, indemnity and insurance

17.1 Remuneration of Directors

17.1.1 In any financial year for the *credit union*, the *directors* remuneration may not exceed the aggregate amount that the *general meeting* determines for that year.

17.1.2 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*.

17.1.3 The *directors'* remuneration accrues daily from the day that the *general meeting* approves the remuneration to the day that the *general meeting* next determines the *directors'* remuneration.

17.2 Travelling Expenses and Insurance: In addition to any remuneration to which a *director* may be entitled, the *credit union* 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 *credit union's* business; and

b. subject to the *Corporations Law*, insurance premiums for a contract that insures the *director* against liabilities that the *director* incurs as an officer of the *credit union*.

17.3 Indemnities for Officers and Former Officers

Corporations Law Commentary: s199A restricts the credit union 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 credit union or a related body corporate;
- liability for pecuniary penalty orders under s1317G or compensation orders under s1317H;
- 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 Law* where the court denies relief.

S199B restricts the credit union 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.

17.3.1 In this Rule *indemnified person* means an officer or agent, or former officer or agent, of the *credit union*.

17.3.2 To the extent that the *Corporations Law* permits:

a. the *credit union* must indemnify an *indemnified person* against any liability that the *indemnified person* incurs in conducting the *credit union's* business or exercising the *credit union's* powers as an officer or agent of the *credit union*; and

b. the *credit union* 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.

17.3.3 The indemnity in paragraph 2a applies in relation to an *indemnified person* for all incidents occurring during the period that person is an officer or agent of the *credit union*, even though a claim is made against the *indemnified person* after they have ceased to be an officer or agent of the *credit union*.

DIVISION 18 Administration

18.1 Seal

18.1.1 The *board* is to provide for the safe custody of the seal.

18.1.2 The seal is to be used only by the authority of the *directors*.

18.1.3 The *board* may authorise:

a. 2 *directors*; or

b. a *director* and a *secretary*,

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

18.2 Secretary

Corporations Law Commentary: Under s204A(2), a credit union must have at least 1 secretary and at least 1 secretary must reside in Australia. S204B(1) provides that only individuals (not bodies corporate) who are at least 18 may be secretaries. S204B(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 s206F or the Court's leave under s206G.

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. The terms of appointment must be consistent with the *fit and proper policy*.

18.3 Resignation of Secretary

18.3.1 A *secretary* may resign by giving the *credit union* notice of the *secretary's* resignation.

18.3.2 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 *credit union* receives the notice of resignation.

Appendix 1 Objects

The *credit union* has the following objects:

- a. to raise funds by subscription, *deposit* or otherwise, as authorised by the *Corporations Law* and *Banking Act 1959* (Cth);
- b. to apply the funds in providing *financial accommodation* to *members*, subject to the *Corporations Law* 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 credit unions and co-operatives; and
 - ii. associations of credit unions and co-operatives, locally and internationally.

Appendix 2 Common Bond

A2-1 Common Bond - Natural Person: An individual is eligible to be a member if the person is a resident of Australia.

A2-2 Common Bond - Body Corporate: A body corporate is eligible to be a member if the body corporate has an office or business address in Australia.

Appendix 3 Shares

Member Shares

A3-1 Subscription Price: The *subscription price* for a *member share* is \$10.00

A3-2 Rights, Obligations and Restrictions Attaching to Member Shares

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

Note: For the holder of a *member share's* entitlement to make *deposits* with, and receive *financial accommodation* from, the *credit union*, see Rule 2.2 and Subrule 3.1.3.

A3-3 Voting Rights

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

A3-4 Distribution on Winding-Up

1. On a winding-up of the *credit union* 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 *credit union*.
2. Each *member share* carries a right to participate in surplus assets equally with every other *member share*.
3. The *credit union* 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 *credit union*.
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.

A3-5 Redemption of Member Shares

1. The *credit union* may redeem a *member share* only if the following conditions are satisfied:
 - a. either:
 - i. the *member* has given the *credit union* notice requesting termination of the *member's* membership of the *credit union* under Rule 4.2;

- ii. the *board* has resolved to terminate the *member's* membership of the *credit union* under Rule 4.3; or
- iii. the *board* has determined that the *member's deposit* accounts with the *credit union* are dormant under Rule 4.4;
- b.** the *credit union* can redeem the *member share* of:
 - i. the profits of the *credit union*; or
 - ii. the proceeds of a new issue of shares made for the purpose of the redemption.

2. On redemption, the *credit union* must pay the *member* an amount equal to the *subscription price* for the *member share* when the *member* subscribed for the *member share* less any amount unpaid on the *member share*.

3. On redemption, the *member shares* are cancelled.

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 Law* Part 2J.1.

A3-6 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 *credit union* is being wound up, the *credit union* 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 *credit union* 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.

A3-7 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.

A3-8 Payment of partly paid shares

1. This clause applies to a member who became a member after the credit union's 2013 Annual General Meeting.

2. The credit union may at any time call for payment of all or part of any unpaid amount in respect of the member share.

- 3.** If:
- a.** the credit union calls for payment of any unpaid amount on a member's member share; and
 - b.** the member fails to pay the amount by the due date
- the member may not exercise any of the rights attaching to his or her member share until the member pays the amount.

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

Appendix 4 Standing orders

A4-1 Time Limits for Speakers

- 1.** The mover of a motion may speak for no more than 5 minutes.
- 2.** Subsequent speakers may speak for no more than 5 minutes.
- 3.** The mover of the motion may reply for no more than 5 minutes.
- 4.** The meeting is free to extend the time a speaker may speak.

A4-2 Amendment

1. On an amendment being proposed to an original motion, no second amendment may be considered until the first amendment has been dealt with.

2. An amendment, when carried, displaces the original motion and becomes the motion to which any further amendment may be moved.

3. If the amendment is not carried, then further amendments to the original motion may be considered.

A4-3 Speakers

1. The mover of an original motion has a right of reply.

2. The mover of an amendment does not have a right of reply.

3. Otherwise, a *member* may speak only once on the same question except to raise a point of order or, with the consent of the chair of the meeting, to give an explanation.

A4-4 Motions to be in Writing: Every motion and every amendment to a motion must be submitted in writing as and when the chair of the meeting requests.

A4-5 Closure of Debate

1. Debate on a motion or an amendment may be brought to a close by a resolution 'that the question be now put'.
2. The motion 'that the question be now put' must be put to the meeting without debate.

Appendix 5 Election of directors

Ballot at general meeting

A5-1 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 | Not less than 84 days before AGM |
| Nominations close | Not less than 63 days before AGM |
| Ballot and election shall be conducted in accordance with provisions of Corporations Act and Constitution | |

A5-2 Nominations

1. The *board* must give *members* a notice calling for *members* to nominate *candidates* not less than 84 days before the AGM. The board may give this notice, in addition to any of the methods allowed in Subrule 1.5, by advertisement:

- a. at the *credit union's* offices; or
- b. in newspapers.

2. Nominations close not less than 63 days before the AGM.

3. Two *members* together have the right to nominate a *candidate*. To nominate a *candidate*, the 2 *members* must give the *credit union* 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. state the *candidate's* age;
- c. be signed by the nominating *members* and the *candidate*; and
- d. be accompanied by a deed poll meeting the requirements of Rule A5-2(8)

4. A *candidate* must give the *credit union* or the *board nominations committee*, all information and consents the *credit union* or the *board nomination committee* reasonably requests to determine if the *candidate* is disqualified by law from acting as a *director*.

5. A *candidate* must give the *credit union* or the *board nominations committee*, all consents, information and documentation that the *credit union* or the *board nomination committee* reasonably requests to assess if the candidate *is fit and proper to be a director* of the *credit union* by reference to the *fit and proper policy*.

6. Each *candidate* must, if required by the *credit union* or the *board nomination committee*, submit to an interview by the *credit union* or *board nomination committee*. The interview can be conducted in such manner as the *credit union* or *board nomination committee* determines.

7. If the *board nomination committee* determines that a *candidate* does not meet the criteria for a person to hold the position of *director* with the *credit union* by reference to the *fit and proper policy* that *candidate* immediately ceases to be a *candidate*.

8. Each candidate must, if required by the *credit union* or the *board nomination committee* give the *credit union* a deed poll in the following form:

I, (*name of candidate*) being a candidate for election as a director of Northern Inland Credit Union Limited (the *credit union*), consent to assessment under the *fit and proper policy* of the *credit union* and undertake to the *credit union* that:

1. If the assessment carried out pursuant to my request does not conclude that I am a fit and proper person to serve as a director of the *credit union*, I will withdraw my candidature for election as a director.
2. I agree to provide any assistance that the *credit union* needs to obtain information for the implementation of the *credit union's* fit and proper policy or any prudential standard or provision of law.
3. I consent to the provision of information by other persons in connection with the application to them of the *credit union's* fit and proper policy or other prudential standard, and waive all rights of action against any person so providing information in good faith
4. I waive all rights of action against the *credit union* in respect of acts or omissions done in good faith, in implementing or seeking to implement the *credit union's* fit and proper policy.

Signed, sealed and delivered as a deed poll

A5.3 Candidate to be given Fit and Proper Policy: Not later than the time when a written nomination is received from a candidate, the *secretary*, must give the candidate a copy of the *fit and proper policy*.

A5-4 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 *credit union* must give each *member* a notice that:

- i. states that the election process has been discontinued;
- ii. sets out the name of each *candidate*;
- 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.

A5-5 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 *credit union* or a *candidate*.
2. The **secretary** must prepare and give the returning officer a roll of **members**.

A5-6 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.

A5-7 Ballot Papers

1. After nominations have closed, the returning officer must prepare ballot papers for the election.
2. The order in which the **candidates** appear on the ballot paper is to be determined by the returning officer by lot.
3. The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the **members**.
4. On issuing each ballot paper, the returning officer must mark the member's name off the roll of **members**.

A5-8 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.

A5-9 Closure of the Ballot: The ballot closes at the time the returning officer specifies.

A5-10 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 *credit union* a written request, the *credit union* 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.

A5-11 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.

A5-12 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 6 Demutualisation approval procedure rules

Division 1- Introduction

A6-1 When the Demutualisation Approval Procedure Rules Apply

1. This Appendix applies in the following situations:

| | |
|--|--|
| 1. Modification or Repeal of Constitution | <p>the <i>credit union</i> 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 <i>Principles of Mutuality</i>;</p> <p>b. to enable the <i>credit union</i> 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 <i>Principles of Mutuality</i> (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 <i>Principles of Mutuality</i>;</p> <p>d. to enable the <i>credit union</i> to admit members where the rights, obligations or restrictions attaching to membership are inconsistent with those set out in the <i>Principles of Mutuality</i> (whether or not any members are so admitted)</p> <p>e. that the <i>credit union's</i> Constitution is otherwise inconsistent with the <i>Principles of Mutuality</i>.</p> |
| 2. Issue of Shares or Admission of Members | <p>the <i>credit union</i> (whether acting through its <i>board</i>, its <i>members</i> 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 <i>Principles of Mutuality</i>;</p> <p>b. to issue <i>securities</i> which confer the right or obligation to subscribe for shares (whether on conversion of the <i>securities</i> 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 <i>Principles of Mutuality</i>; or</p> <p>c. to admit members with rights, obligations or restrictions attaching to membership inconsistent with those set out in the <i>Principles of Mutuality</i>.</p> |
| 3. Restructure | <p>the <i>credit union</i> (whether acting through its <i>board</i>, its <i>members</i> 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 <i>credit union</i> no longer complies with the <i>Principles of Mutuality</i>;</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 <i>credit union</i> other than shares fitting the description of 'additional shares' in the <i>Principles of Mutuality</i>;</p> <p>c. a group of <i>associates</i>, 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 hold more than 90% of the shares in the <i>credit union</i> other than shares fitting the description of 'additional shares' in the <i>Principles of Mutuality</i>;</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 <i>credit union's</i> gross assets, based on the latest report that the <i>credit union</i> has given the Australian Prudential Regulation authority as at the time of the transfer;</p> <p>e. a group of <i>associates</i>, 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 <i>credit union's</i> gross assets, based on the latest report that the <i>credit union</i> has given the Australian Prudential Regulation authority as at the time of the transfer; or</p> <p>f. the successor to the <i>credit union's</i> 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>the <i>credit union</i> proposes to modify or repeal:</p> <p>a. any of the Clauses in this Appendix;</p> <p>b. any of the <i>Principles of Mutuality</i>; 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 A6-1(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 A6-5 to Clause A6-8; 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 A6-1(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 *credit union*; and
 - b. the Australian Securities and Investments Commission delivers a copy of the written notice to the *credit union*.
- 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 A6-1(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 A6-1(3)(a);
 - b. making an order or exemption that permits the *credit union* to adopt or recommence the operation of this Appendix or provisions to the effect of this Appendix; or
 - c. otherwise permitting the *credit union* to recommence the operation of this Appendix.

A6–2 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 *credit union*, 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 *credit union*, 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 *credit union* or an associate of an officer of the *credit union*

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 A6–1(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*.

A6–3 Demutualisation Approval Procedure

1. If this Appendix applies, the *credit union* 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 A6–1(1);
- b. issuing the *securities* or admitting the members as set out in item (2) of the Table in Subclause A6–1(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 A6–1(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 A6–1(1):

- a. the resolution is of no effect until the procedure set out in Divisions 2 and 3 is complied with; and

b. the *credit union* 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 A6–5.

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 *credit union* 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 *credit union* an indemnity in a form satisfactory to the *board*.

5. If Subclause A6-3(4)(b) applies, members in general meeting may resolve that:

a. the *credit union* pay all costs associated with disclosure and conduct of the postal ballot;

b. the *credit union* reimburse the members proposing the *proposed transaction* for the costs associated with disclosure and conduct of the postal ballot they incur.

A6–4 Approval of Demutualisation

1. If this Appendix applies, the *credit union* 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 *credit union* 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 *credit union* 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.

2. For purposes of this Clause, members entitled to repayment of different amounts on redemption of their member shares are to be treated as in different classes.

Division 2 - Disclosure

A6–5 Disclosure Documents Sent With Ballot Paper: The *credit union* must send the following documents with the ballot paper that it must send each member under Clause A6–14:

a. a disclosure statement as described in Clause A6–6;

b. a director’s statement from each director as described in Clause A6–7; and

c. an *independent expert’s* report, commissioned by the *credit union*, as described in Clause A6–8.

A6–6 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 *credit union*;

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 *credit union* (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 *credit union’s* business;

ii. any major changes to be made to the *credit union’s* business; and

iii. changes to benefits, products and services;

iv. the future employment of the present employees of the *credit union*;

h. whether the *credit union’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 *credit union* 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 *credit union*.

3. If the *proposed transaction* involves the modification or repeal, as set out in item (4) of the Table in Subclause A6–1, 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 A6–1(1), then the disclosure statement must disclose the matters set out in Subclause A6–6(1) and Subclause A6–6(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 A6–1(1) of which the person is aware (to the extent that the person is aware of the matters relating to those transactions).

A6–7 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 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 *credit union*;
 and giving reasons for that opinion; and
- c. details of:
 - i. any relationship between the *independent expert* and the *credit union*, 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 *credit union*;
 - 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 *credit union* commissions more than 1 *independent expert's* report, all of the reports must be sent to each member.

Division 3 - Postal Ballot

A6–9 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 *credit union*; or
 - c. is removed from office by the members.

A6–10 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.

A6-11 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 *credit union* 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.

A6-12 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 *credit union* has members.
2. The returning officer may exercise the power conferred by this Clause more than once in respect of a ballot.

A6-13 Printing of Ballot Papers: The returning officer must ensure that a sufficient number of ballot papers is printed for the purposes of the ballot.

A6-14 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:
 - a. the extent to which the procedures are efficient in enabling the returning officer to detect any fraud or impropriety in the voting process;
 - b. the extent to which the procedures protect the anonymity of the voter;
 - c. instructions for voting are legible and clearly expressed so as to accurately inform members how to complete and lodge a ballot paper;
 - d. provisions for issuing a duplicate ballot paper when the original has been lost or spoiled;
 - e. the extent to which procedures for receiving, checking, scrutinising and counting ballot papers are efficient; and
 - f. 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 *credit union'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

A6-15 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.

A6-16 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.

A6-17 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.

A6-18 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.

A6-19 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.

A6-20 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 *credit union* certifying:
 - a. if the *credit union* 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 *credit union* 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.
4. For purposes of this Clause, members entitled to repayment of different amounts on redemption of their member shares are to be treated as in different classes.

Appendix 7 Board Nomination Committee

A7-1 Board nomination committee

1. The board must establish and maintain a *board nomination committee*.
2. The function of the *board nomination committee* shall include the assessment of;
 - a. All candidates prior to their appointment or election as *directors*; and
 - b. All *directors*; and
 - c. *Company secretary*to determine their fitness and propriety to be and act as a *director* or *secretary* under the requirements of the *fit and proper policy*.
3. The *board nomination committee* shall consist of not less than three *directors* as the *board* determines, provided:
 - a. none of the members of the *board nomination committee* are employees of the *credit union*; and
 - b. no *director* may be a member of the *board nomination committee* if the *director* is nominated to be a *candidate*.
4. The *board*, may at any time and in its absolute discretion:
 - a. Suspend or terminate the appointment of person as a member of the *board nomination committee*; and
 - b. May at any time and in its absolute discretion give directions to the *board nomination committee* as to the procedures it is to follow.

A7-2 Role of the Committee: *The board nomination committee must assess*

- a. all *directors*:
 - i. who hold office at 1 October 2006;
 - ii. annually
 - iii. with respect to whom the *board nomination committee* has received information material to an assessment of that *director's* fitness and propriety;
 - b. any person who is nominated as a *candidate* prior to their appointment or election as *director* under Rule 13.3;
 - c. any person prior to their appointment as a *director* by the *board* under Rules 13.4 and 13.5;
 - d. any *secretary*:
 - i. who holds office at 1 October 2006;
 - ii. annually;
 - iii. with respect to whom the *board nomination committee* has received information material to an assessment of that *secretary's* fitness and propriety;
 - e. any person prior to their appointment as a *secretary* by the *board* under Rule 18.2;
- as to their fitness and propriety to be and act as a *director* or *secretary*, by reference to the *fit and proper policy*.

A7-3 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.