

Constitution

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Preamble

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

Customers

PRINCIPLES OF MUTUALITY

1. Subject to the exceptions in Principles 2 and 3, the Bank may not grant financial accommodation (except for credit cards) to, a person who is not a member but may accept deposits from both members and non-members.
2. The Bank 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 Bank's shares.
3. The Bank may accept deposits from, or grant financial accommodation to, another ADI.

Membership and Member Shares

HOW TO BECOME A MEMBER

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

HOW MANY MEMBER SHARES THE BANK MAY ISSUE A PERSON

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

CONSIDERATION PAID FOR MEMBERSHIP SHARES

7. The Bank may issue member shares as wholly paid or partly paid.
8. The Bank 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 Bank's members.

DIVIDENDS AND SURPLUS

11. A member share may confer a right to participate in the Bank's profits through payment of dividends.
12. A member share must confer a right to participate in surplus when the Bank 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 Bank'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.

Mutual capital instruments (MCIs)

MCI MUTUAL ENTITY

17. The Bank is intended to be an MCI mutual entity (as defined in the Corporations Law).

VOTING

18. Subject to this Constitution and the Corporations Law, MCIs may confer such rights to vote at general meetings as are provided for in their terms of issue.
19. If a member is also an MCI Holder, the member has no more than one vote at general meetings of the Bank, regardless of the applicable terms of issue of the MCI.

DIVIDENDS AND SURPLUS

20. An MCI may confer:
 - (a) the right to participate in the Bank's profits through payment of dividends; and
 - (b) a right to participate in surplus when the Bank is wound up, but only to the extent permitted by this Constitution, the Corporations Law, the prudential standards and the terms of issue of the MCIs.

Control of the Bank

ACCUMULATION OF SECURITIES

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

DIRECTORS

22. Only a member of the Bank may be a director of the Bank.

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.

candidate means a person whom the Director Nominations Committee determines to be a candidate under Appendix 5 Clause A5-2(5).

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

Corporations Law means the Corporations Act 2001 (Cth).

Bank means the company described in this Constitution.

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

director means a director for the time being of the Bank.

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

elected director means a director:

- (a) appointed by the members under Rule 13.3; or
- (b) appointed by the board to fill a casual vacancy under Rule 13.4.

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 Bank);
- (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 Bank provides or enters in the ordinary course of its banking business.

general meeting means a general meeting of shareholders.

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

MCI means a share as described in Appendix 3 Division 2.

MCI Holder means a person who is the holder of an MCI and whose name is for the time being entered in the Register of Shareholders.

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

member share means a share as described in Appendix 3 Division 1.

prudential standard means:

- (a) any prudential standard that APRA determines under the Banking Act 1959 (Cth);
- (b) any prudential regulation made under the Banking Act 1959 (Cth); and
- (c) any APRA transitional prudential standard applying to the Bank 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.

Section 12 and Schedule 1 of the Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999 (Cth) specify the APRA transitional prudential standards that apply to banks.

Register of Shareholders means the register of members of the Bank under the Corporations Law.

secretary means a secretary for the time being of the Bank.

share means a member share or an MCI, as context requires.

shareholder means a member or an MCI Holder, as context requires.

subscription price means the amount payable by a person on subscription for a share or, if the share was created on conversion of a capital instrument in accordance with Prudential Standards, the nominal dollar value of that capital instrument prior to conversion into the share.

voting holder means a member eligible to vote or an MCI Holder who has one vote at a general meeting of the Bank (either because such MCI Holder holds a member share or because the MCI Holder has been granted one vote under the terms of issue of the MCIs held), as context requires.

1.2 INTERPRETATION

- (1) In this Constitution, unless the context requires otherwise:
 - (a) the singular includes the plural and vice versa;
 - (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
 - (c) words and expressions defined in the Corporations 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.

- (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 Bank 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 Bank's registered office.

1.4 REPLACEABLE RULES DO NOT APPLY

The replaceable rules in the Corporations Law do not apply.

1.5 INTENTION TO BE AN MCI MUTUAL ENTITY

The Bank is intended to be an MCI mutual entity for the purposes of the Corporations Law.

1.6 NOTICES

- (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

The parties to the Constitution are the Bank and its shareholders, directors and secretaries: see s140(1).

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

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

- (4) A person may send a notice or other document to another person in any of the ways set out in column 1 of the table. The other person receives the notice at the time set out in column 2:

Delivery method	Time person receives notice
Hand delivering the notice personally	<p>The other person receives the notice:</p> <p>(a) if hand delivered before 4:00pm on a business day — on that business day;</p> <p>(b) if hand delivered after 4:00pm on a business day — on the next business day; or</p> <p>(c) if hand delivered on a day other than a business day — on the next business day.</p>
Sending the notice by pre-paid post	<p>The other person receives the notice on the third business day after posting unless it is actually delivered earlier.</p>
Sending the notice by electronic means	<p>The other person receives the notice:</p> <p>(a) if sent before 5:00pm on a business day — on that business day;</p> <p>(b) if sent after 5:00pm on a business day — on the next business day; or</p> <p>(c) if sent on a day other than a business day — on the next business day.</p> <p>This rule does not apply where the person sending the notice by electronic means has evidence that the notice did not reach the other person's electronic address.</p>

- (5) If a person sends a shareholder a notice in accordance with this Rule, any person to whom that shareholder transfers or transmits a share is taken to receive the notice when the first person sent the shareholder the notice.

Division 2 — Objects and Limit on Powers

CORPORATIONS LAW COMMENTARY

The Corporations Law provides that the Bank 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 Bank's objects and to expressly limit the Bank's exercise of its powers: see s125. The statement of objects is optional. However, the limit on power in Rule 2.2 is a requirement of the Principles of Mutuality.

2.1 OBJECTS

The Bank has the objects set out in Appendix 1.

2.2 CUSTOMERS

The Bank may only provide financial accommodation to members, (except for credit cards which may be provided to non-members), ADIs or bodies that do not have the power to acquire, or that the law prohibits from acquiring, the Bank's shares; but may accept deposits from both members and non-members.

Division 3 — Membership

3.1 ADMISSION TO MEMBERSHIP

CORPORATIONS LAW COMMENTARY

A person becomes a member of the Bank if the person agrees to become a member and the Bank enters the person's name in the Register of Shareholders: see s231.

- (1) Subject to any other Rule allowing admission of members, the Bank may admit a person as a member only if:
 - (a) The person makes a verbal request or lodges a written/electronic application in a form the Bank requires.
 - (b) if the Bank has a common bond — the person provides evidence, satisfactory to the Bank, that the person is eligible to be a member under the common bond;
 - (c) The person applies for a member share and pays the subscription price for the member share (if applicable).

Note: The Bank may also admit a person as a member by registering a transfer or transmission of a member share to the person under Rule 9.3, Rule 10.2, Rule 10.3 or Rule 10.4.

- (2) The board has an absolute discretion in exercising the Bank's power to admit members without any obligation to give a reason for not admitting a person as a member.
- (3) When the Bank admits a person as a member, the Bank must:
 - (a) issue the member share to the person;
 - (b) enter the person's particulars in the Register of Shareholders as required by the Corporations Law; and
 - (c) give the person notice that it has admitted the person as a member.
- (4) Unless expressly stated otherwise in this Constitution:
 - (a) an MCI Holder is not a member of the Bank merely by virtue of holding an MCI;
 - (b) an MCI Holder may be (or become) a member of the Bank if they are otherwise admitted to membership in accordance with this Constitution; and
 - (c) an MCI Holder who is also a member is not deemed to be a member (and the provisions of this Constitution relating to membership do not apply) in respect of any MCIs held by that person.

If a member is also an MCI Holder, that member has no more than one vote at a general meeting of the Bank, regardless of the applicable terms of issue of the MCI.

3.2 DELEGATION OF POWER TO ADMIT MEMBERS

The board may delegate its power to admit members to officers and/or employees of the Bank.

The delegation must not include authority to further delegate the power to admit members.

3.3 JOINT MEMBERS

- (1) The Bank may admit 2 or more persons eligible for admission under Subrule 3.1(1) as a joint member of the Bank.
- (2) The persons constituting the joint member may determine the order in which their names appear in the Register of Shareholders. If the persons constituting the joint member do not do so, the Bank may determine the order in which their names appear in the Register of Shareholders.
- (3) The person named first in the Register of Shareholders is the primary joint member. The Bank may duly send any notice, certificate or other document to the joint member by sending it to the primary joint member. Only the primary joint member is entitled to vote on behalf of the joint member.

- (4) At any time, the joint member may give the Bank a notice requiring the Bank to change the primary joint member or otherwise change the order in which their names appear in the Register of Shareholders. Each person constituting the joint member must sign the notice. The Bank must change the Register of Shareholders as soon as practicable after receiving the notice.
- (5) Any person constituting a joint member may give an effective receipt for any dividend, distribution on winding-up or return of capital in relation to the joint member's shares.
- (6) The Bank may accept deposits from, or provide financial accommodation to, the joint member or to any person constituting the joint member.
- (7) The persons constituting a joint member are jointly and individually liable for any liability that the joint member may have in relation to the joint member's shares.
- (8) In this Constitution, the joint member is taken to be a person separate to the persons constituting the joint member.

CORPORATIONS LAW COMMENTARY

The Corporations Law recognises registration of joint members of a bank. The joint members:

- are taken to be a single member of the bank; 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 SHAREHOLDERS

The Bank can remove the member's name from the Register of Shareholders if:

- (a) the Bank redeems the member's member share under Rule 4.2, Rule 4.3 or Rule 4.4;
- (b) the Bank 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 Bank 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 Bank 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 Bank 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 Bank from providing further financial accommodation (except for credit cards) to persons who cease to be members.

4.2 MEMBER'S REQUEST FOR TERMINATION

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

4.3 TERMINATION BY THE BOARD

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

- (2) The Bank must give notice of the proposed resolution under Subrule (1) to the member at least 14 days before considering the proposed resolution.
 - (3) At the time the board considers the proposed resolution, the member is entitled:
 - (a) to be present with or without the member's legal representative; and
 - (b) to be heard, either in person or through the member's legal representative.
 - (4) On redeeming the member share, the Bank 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 Shareholders; or
 - (b) crediting any of the member's accounts with the Bank; at the time the member share is redeemed.
 - (5) Despite any other rule in this document, the board authorises the Bank to redeem a member's member share if the member does anything which puts at risk the health or safety of any director, officer, employee or other staff of the Bank.
- (3) The Bank must send notice of the proposed resolution under Subrule (2) to the member at the member's last known address as shown on the Register of Shareholders at least 28 days before considering the proposed resolution.
 - (4) On redemption of the member share, the Bank must pay the amount payable on redemption of the member share into the member's account.
 - (5) If the Bank redeems a person's member share under this Rule, the person may require the Bank to reinstate the person's deposit accounts at any time before the Bank pays the money in the deposit account in accordance with the relevant unclaimed money legislation. If the person requires the Bank to reinstate the person's deposit accounts:
 - (a) the Bank must reinstate the person's deposit accounts as soon as practicable; and
 - (b) if the Bank has redeemed the member's member share — the Bank must issue a member share to the person may debit the member's deposit account for the subscription amount.

4.4 TERMINATION WHERE ACCOUNTS DORMANT

- (1) This Rule does not apply to a retirement savings account to the extent that the Retirement Savings Account Act 1997 (Cth) provides otherwise.
- (2) The Bank 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.

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 Bank may only issue member shares and MCIs.

5.2 BOARD POWER TO ISSUE SHARES

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

5.3 RESTRICTIONS ON ISSUE OF MEMBER SHARES

- (1) The Bank must not issue:
 - (a) options to subscribe for member shares;
 - (b) securities that may be converted to member shares; or
 - (c) securities with pre-emptive rights to member shares.

- (2) The Bank may only issue member shares in accordance with Subrule 3.1(3).
- (3) The Bank may only issue member shares to persons on the basis that the person pays the full subscription price in cash on issue.
- (4) The Bank may only issue 1 member share to any person. However, the Bank 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 Bank can issue a member share to a person who already constitutes a joint member: see Rule 3.3.

Division 6 — Calls, Forfeiture and Liens

Note: This Division 6 does not apply to MCIs, which must be issued fully-paid.

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.

- (1) This Rule applies if some or all of the subscription price for a share is payable on the Bank calling up payment of some or all of the unpaid subscription price. This Rule applies in relation to a share subject to:
 - (a) any restrictions in the terms of issue for the share; and
 - (b) any special resolution providing that the Bank can only call up some or all of the subscription price for shares if the Bank becomes an externally-administered body corporate.

- (2) The Bank may call for payment of any amount of the unpaid subscription price for a share by board resolution. The Bank must give a member holding a share on which the Bank has made a call a notice setting out how much, when and how the member must make the payment. The Bank must give the notice at least 14 days before the time the member must pay the call.
 - (3) The Bank may revoke or postpone a call on a share by board resolution. The Bank must give each member holding a share for which the Bank has revoked or postponed a call notice as soon as practicable after the board resolution.
 - (4) In any proceeding to recover unpaid instalments, a member is conclusively presumed to be liable for a call if:
 - (a) the Bank'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 Shareholders as holder of the share on the date of the board resolution; and
 - (c) the Bank gave the member a notice in accordance with Subrule (2).
 - (5) At any time, the Bank may accept from a member prepayment of any amount of the unpaid subscription price on a share.
- ### 6.2 EFFECT OF FAILURE TO PAY UNPAID AMOUNTS
- (1) This Rule applies if a member does not pay any amount of the unpaid subscription price for a share at the time the amount becomes due. This Rule does not limit any other remedies that the Bank may have against the member.
 - (2) The member must pay:
 - (a) the amount due on the share; and
 - (b) all costs and expenses that the Bank 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 Bank may waive all or part of the expenses payable under this Subrule by board resolution.

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

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

6.3 FORFEITURE AND SURRENDER

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

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

6.4 LIENS

- (1) The Bank may at any time exempt a share wholly or in part from this Rule by board resolution.
- (2) The Bank 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 Bank.
- (3) If an amount secured by a lien in Subrule (2) is presently due, the Bank 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 Bank may sell the share.

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

- (4) If a member does not pay the amount due by the date stated in the sale notice under Subrule (3), the Bank may sell the shares on the terms and in the manner that the board determines. The Bank may:

- (a) execute a share transfer to give effect to a sale of the shares; and
- (b) register the transferee as the holder of the shares.

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

- (5) A member whose shares have been sold remains liable to pay the Bank all amounts that the member or the member's estate owes to the Bank, whether or not presently due, less any consideration that the Bank 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 s254T. Section 254WA(2) of the Corporations Law also provides that, without limiting section 254T, an MCI mutual entity must not pay a dividend unless the payment of the dividend is fair and reasonable to the entity's shareholders as a whole.

7.1 PAYMENT OF DIVIDENDS

- (1) The board may determine that the Bank 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 Bank pays the dividend other than in cash, the board may fix the value of any securities issued or assets transferred.

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

CORPORATIONS LAW COMMENTARY

Section 254V (1) provides that the Bank 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 shareholders 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

Banks do not have to issue certificates to members for member shares: see Corporations Regulations reg 12.08.08. However, banks that issue other classes of shares have to issue certificates for those other classes of shares: see s1071H.

A member whose certificate is lost or destroyed may apply to the Bank for a new certificate. The Bank 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 Bank with an indemnity: see s1070D.

8.1 SHARE CERTIFICATES

- (1) This Rule does not apply in relation to member shares.
- (2) If the Bank is required by the Corporations Law to issue a share certificate to an MCI Holder in respect of MCIs, the MCI Holder may require the Bank to issue to the them without charge 1 certificate for each class of MCIs in the Bank that the MCI Holder holds, unless the terms of issue of the MCIs otherwise provide.

Division 9 — Transfer of Shares

9.1 FORM OF SHARE TRANSFER

A shareholder wishing to transfer the shareholder's share 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 Bank 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 Bank becomes the owner of the share transfer and has a right to exclusive possession of the share transfer.

9.3 REGISTRATION OF SHARE TRANSFER

- (1) The Bank must not register a share transfer if:
 - (a) the terms of issue for the shares prohibit the transfer of the shares to the transferee;
 - (b) the share transfer is not in the form set out in Rule 9.1; or
 - (c) if the transfer of shares is dutiable — the share transfer is not duly stamped.
- (2) The Bank may refuse to register a share transfer unless:
 - (a) the shares are fully-paid;
 - (b) the Bank 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 Bank.
- (3) The transferor of shares remains the holder of those shares until the Bank enters the transferee's name as holder of those shares in the Register of Shareholders.

CORPORATIONS LAW COMMENTARY

If a Bank 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 Bank's registered office: see s1071E.

9.4 TRANSFER OF AN MCI THROUGH A LICENSED CS FACILITY

Subject to the Corporations Law, the provisions of this Division 9 do not apply to a transfer of an MCI effected through a licensed CS facility (as defined in the Corporations Law) to the extent provided in the terms of issue applicable to the MCI.

9.5 POWERS OF ATTORNEY

- (1) The Bank 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.
 - (c) The Bank may rely on the power of attorney until it receives a notice informing it that the power of attorney has been revoked; or
 - (d) the member has died.

9.6 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 Bank may register a person as holder of a shareholder's shares under this Division even though the person is not eligible to be a member under the common bond.

10.2 TRANSMISSION OF SHARES ON DEATH

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

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 s1072C.

10.3 TRANSMISSION OF SHARES ON BANKRUPTCY

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

10.4 TRANSMISSION OF SHARES ON MENTAL INCAPACITY

If a person entitled to shares because of a shareholder'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 shareholder's shares:

- (a) the person may require the Bank to register the person as holder of the shareholder'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 shareholder.

Division 11 — Holding General Meetings

CORPORATIONS LAW COMMENTARY

HOLDING A GENERAL MEETING

A general meeting must be held at a reasonable time and place: see s249R.

A general meeting can be held using any technology (such as video conferencing), provided that it gives the shareholders as a whole a reasonable opportunity to participate in the meeting: see s249S.

NOTICE OF GENERAL MEETING

At least 21 days' notice must be given of a general meeting. A meeting can be called on shorter notice with the consent of the requisite number of shareholders, but not to remove a director or auditor: see s249H.

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

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

Notice must be given personally or by post (s249J). See Subrule 1.6 (4) as to service by post.

The auditor must also receive the notice convening a general meeting and other communication shareholders are entitled to receive: see s249K.

CONTENT OF NOTICE

A notice convening a general 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:
 - (i) that the voting holder has a right to appoint a proxy;
 - (ii) whether or not the proxy needs to be a shareholder of the Bank; and
 - (iii) that a shareholder 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.

SHAREHOLDERS' RIGHT TO GIVE NOTICE OF A RESOLUTION

Voting holders with at least 5% of the votes that may be cast at a general meeting or at least 100 shareholders may give a Bank 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.

SHAREHOLDERS' REQUEST FOR STATEMENT TO BE DISTRIBUTED

A Bank must distribute a statement about a resolution, or other matter to be considered at a general meeting, as requested by a certain number of shareholders: 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 the following, even if not referred to in the notice of meeting:

- consideration of the annual financial report, directors' report and auditor's report;
- election of directors;
- appointment of auditor; and
- fixing of the auditor's remuneration: see s250R.

THE CHAIR OF THE AGM MUST:

- allow the shareholders as a whole a reasonable opportunity to ask questions about, and to comment on, the management of the Bank: see s250S; and
- allow the shareholders as a whole 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 s250T.

CALLING GENERAL MEETINGS

CORPORATIONS LAW COMMENTARY

Shareholders' right to call a general meeting

A general meeting must be held if 100 shareholders or voting holders 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 ss249D and 249F. In any case, voting holders who hold at least 5% of the votes can call and arrange to hold a meeting themselves: see s249F.

The board may call a general meeting.

11.1 ADJOURNING GENERAL MEETINGS

- (1) The chair of a general meeting at which a quorum is present:
 - (a) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
 - (b) must adjourn the meeting if directed by ordinary resolution.
- (2) The Bank must give notice of an adjourned general meeting if the adjournment is for 1 month or more.

- (3) The only business that an adjourned general meeting may deal with is business unfinished at the general meeting that was adjourned.

11.2 PROCEEDINGS AT GENERAL MEETINGS

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

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

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

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

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

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

- (4) The Standing Orders in Appendix 4 apply to the conduct of debate at general meetings.

Division 12 — Voting at General Meetings

12.1 VOTING

- (1) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- (2) If the Bank has an electronic voting system which permits voting holders to vote at or prior to a meeting by electronic means on a show of hands or a poll, a vote cast by a voting holder by electronic means is taken to have been cast on the show of hands or poll and is to be counted accordingly.
- (3) If a voting holder has voted on a resolution by electronic means prior to a meeting the voting holder may not cast another vote on the resolution at the meeting.
- (4) Before a general meeting votes by a show of hands on a resolution, the chair must inform the meeting if any votes have been received by electronic means prior to the meeting and, if so:
 - (a) how many valid votes by electronic means the Bank has received prior to the meeting; and
 - (b) how the votes received by electronic means prior to the meeting have voted on the resolution.
- (5) Before a general meeting votes by poll on a resolution, the chair must inform the meeting:
 - (a) If any proxy votes have been received and, if so:
 - (i) how many proxy documents the Bank has received that validly appoint a person present at the meeting as proxy;
 - (ii) how many of these proxy documents direct the proxies how to vote on the resolution; and
 - (iii) how the proxies are directed to vote on the resolution.
 - (b) If any votes have been received by electronic means prior to the meeting and, if so:
 - (i) how many valid votes by electronic means the Bank has received prior to the meeting; and
 - (ii) how the votes received by electronic means prior to the meeting have voted on the resolution.

- (6) The general meeting passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (7) 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

Section 250L allows the following to demand a poll:

- 5 voting holders entitled to vote on the resolution;
- voting holders 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).

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

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

12.4 BODY CORPORATE REPRESENTATIVES

CORPORATIONS LAW COMMENTARY

Section 250D says that a body corporate voting holder may appoint a representative to exercise the voting holder'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 voting holder can appoint more than 1 representative but only 1 can exercise the voting holder's powers at any one time.

- (1) A voting holder that appoints a body corporate representative must give the Bank:
 - (a) if the voting holder appointed the representative by board resolution — a certified copy of the board resolution appointing the representative; and
 - (b) otherwise — a copy of the instrument appointing the representative;

as soon as practicable after appointing the representative, and in any event before any general meeting at which the representative may exercise the voting holder's rights.

- (2) In addition to the rights and powers a voting holder's representative may exercise under the Corporations Law, the representative may exercise the voting holder's right to vote in a ballot to appoint directors by election.

12.5 PROXIES

CORPORATIONS LAW COMMENTARY

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

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

- (3) A proxy does not have a right to vote on a show of hands.
- (4) If a voting holder appoints the chair as the voting holder's proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.
- (5) Unless the Bank 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 voting holder dies; or
 - (b) the appointing voting holder is mentally incapacitated;
 - (c) the appointing voting holder revokes the proxy's appointment;
 - (d) the appointing voting holder revokes the authority under which the proxy was appointed by a third party; or
 - (e) the appointing voting holder transfers the share in respect of which the appointing voting holder 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 general meeting or adjourned general meeting at which the vote objected to is cast; and
- (b) must be ruled upon by the chair whose decision is final.

Division 13 — Directors Appointment and Vacation of Office

13.1 NUMBER OF DIRECTORS

- (1) The number of elected directors is determined by the board from time to time subject to there being a minimum of 5.
- (2) The board may appoint up to 3 directors in addition to elected directors. The board may only appoint as director:
 - (a) the Chief Executive Officer of the Bank – in which case the term of office ends when the person ceases to be Chief Executive Officer, or such earlier date as determined by the board prior to the person's appointment as director;

- (b) a person who is not an employee of the Bank – in which case the term of office ends 3 years after appointment, or such earlier date as determined by the board prior to the person's appointment as director.
- (3) The majority of directors **must be** elected directors.

CORPORATIONS LAW COMMENTARY

Section 201A(2) provides that banks must have at least 3 directors (not counting alternate directors) and that at least 2 must ordinarily reside in Australia.

13.2 ELIGIBILITY TO BE A DIRECTOR

- (1) An individual is eligible to be a director if the person:
 - (a) is a member;
 - (b) has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; and
 - (c) is not disqualified by law from being or acting as a director.
- (2) A person is not eligible to be appointed an elected director under Rule 13.3 if the Director Nominations Committee has determined that the person does not have the appropriate fitness and propriety to be and act as a director, by reference to the board's Fit and Proper Policy.
- (3) For directors appointed by members, a person is only eligible to be appointed director if, in addition to satisfying Rule 13.2.1 and Rule 13.2.2, the person:
 - (a) has been a member continuously for at least 3 years at the date of nomination; or
 - (b) is a director seeking re-appointment.

CORPORATIONS LAW COMMENTARY

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

Section 201B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a director if the appointment is made with ASIC's permission under s206GAB or the Court's leave under s206G.

13.3 APPOINTMENT BY MEMBERS — ELECTION

The members may appoint a person to be an elected director by election held under the provisions of Appendix 5.

13.4 APPOINTMENT BY BOARD — CASUAL VACANCIES

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

13.5 TERM OF OFFICE

- (1) Subject to the Corporations Law and the rotation provisions in this Rule, an elected director's term of office:
 - (a) starts at the end of the AGM at which the elected director's election is announced; and
 - (b) ends at the end of the third AGM after the AGM at which the elected director's election is announced.

- (2) If the number of elected directors that members appoint is more than a third of the number determined under Rule 13.1(1):
 - (a) the term of office for the third of the number determined under Rule 13.1(1) that receives the most votes at the election, ends at the end of the third AGM after the AGM at which the elected 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 number of elected directors determined under Rule 13.1(1) are due to retire at those earlier AGMs.

Elected directors with less votes retire at earlier AGMs than those with more votes.

- (3) For purposes of Subrule (2):
 - (a) if the number determined under Rule 13.1(1) is not divisible by 3 — round fractions up to the nearest whole number in determining how many elected directors there are in a third or in two thirds of the number determined under Rule 13.1(1); and
 - (b) if 2 or more elected directors have the same number of votes — the order of retirement amongst them is determined by lot.

13.6 AUTOMATIC VACATION OF OFFICE

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

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

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

CORPORATIONS LAW COMMENTARY

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

13.7 RESIGNATION

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

13.8 ALTERNATE DIRECTORS

- (1) In this Rule, unless the context requires otherwise: alternate means a person that a director appoints as his or her alternate director under Subrule (2), but only in the person's capacity as the alternate director means the director who appoints an alternate under Subrule (2).
- (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(1);
 - (b) is not a director; and
 - (c) is not an alternate for another director.
- (3) A director (but not an alternate) may give the Bank 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 Bank to give notices of board meetings to the alternate; and
 - (d) whether or not the alternate can sign circulating resolutions.

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

- (4) The alternate is not the appointor's agent, but a director of the Bank. 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.
- (5) The Bank only has to give notice of board meetings to the alternate if the appointor has given the Bank a notice requiring it to do so.

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

- (6) The alternate may only be present at meetings of directors at which the appointor is absent.

The alternate:

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

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

- (7) The reference to 'all directors' in Rule 15.5 refers to:
 - (a) if the appointor notifies the Bank 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.
- (8) The Bank 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 Bank. This does not affect any right to remuneration that the alternate may have against the appointor.

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

- (9) The alternate's office automatically becomes vacant if:
 - (a) the appointor evokes 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 13.6 and Rule 13.7.

13.9 DIRECTOR NOMINATIONS COMMITTEE

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

Division 14 — Directors Powers

14.1 POWERS AND DUTIES OF THE BOARD

The board:

- (a) manages the Bank's business; and
- (b) may exercise all the powers of the Bank 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 Bank. The board may authorise the application of signatures to negotiable instruments by machine or other facsimile method.

14.3 DELEGATION

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

CORPORATIONS 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.

- (2) The board must establish policies for the guidance of delegates in the exercise of any powers so delegated.

- (3) Without limiting its powers, the board may appoint a person to be the Bank'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

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

15.1 CALLING AND CONDUCT OF BOARD MEETINGS

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

15.2 QUORUM OF BOARD

- (1) The quorum for a board meeting is the greater of:
 - (a) a majority of directors;
 - (b) 3 directors;
 and the quorum must be present at all times during the meeting.
- (2) If, at any time, the number of directors is less than the quorum:
 - (a) the board may meet only for the purpose of filling any casual vacancies or for calling a general meeting; and
 - (b) the board may conduct business by circulating resolution under Rule 15.5.

15.3 CHAIR OF BOARD

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

15.4 PASSING OF DIRECTORS' RESOLUTIONS

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

15.5 CIRCULATING RESOLUTIONS

- (1) A resolution in writing signed by all directors or a resolution in writing of which notice has been given to all directors and which is signed by a majority of the directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the board) is a valid resolution of the board. The resolution may consist of several documents in the same form each signed by one or more of the directors.
- (2) For the purposes of Subrule 15.5(1) a reference to 'all directors' does not include a reference to:
 - (a) a director who, at a meeting of the directors, would not be entitled to vote on the resolution;
 - (b) a director who disqualifies himself or herself from considering the resolution in question; and
 - (c) any director on leave of absence approved by the board.
- (3) For the purposes of Subrule 15.5(1):
 - (a) a statement sent electronically by a director to an agreed electronic address stating that they are in favour of a specified resolution shall be taken to be a document containing that statement and duly signed by the director.

Such document shall be taken to have been signed by the director at the time of its receipt at the agreed electronic address; and

- (b) a director may consent to a resolution by telephoning the secretary or chairman and signifying assent to the resolution and clearly identifying its terms.
- (4) A resolution in writing under this Rule shall be deemed to have been passed at a meeting of the directors held on the day and at the time at which the document was last signed or consented to by a director and the document shall be deemed to constitute a minute of that meeting and shall be recorded by the secretary in the minute book.

15.6 COMMITTEES OF DIRECTORS

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

Division 16 — Conflicts of Interest

CORPORATIONS 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

- (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 Bank'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 Bank'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.
- (2) The director is not in breach of his or her duties to the Bank merely because he or she acts in matters that relate to the director's interest.
- (3) The director may vote on matters that relate to the director's interest.
- (4) In relation to any transactions that relate to the director's interest:
 - (a) the transactions may proceed;
 - (b) the Bank cannot avoid the transactions merely because of the director's interest; and
 - (c) the director may retain benefits under the transactions despite the director's interest.

16.2 DIRECTOR NOT IN BREACH IF DOES NOT ACT IN MATTERS RELATING TO DIRECTOR'S INTERESTS

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

CORPORATIONS LAW COMMENTARY

Section 195 provides that a director of a bank 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.

- (2) The director is not in breach of duty to the Bank merely because he or she does not act in relation to the matter.
- (3) The board may vote on matters that relate to the director's interest in the director's absence.
- (4) In relation to any transactions that relate to the director's interest:
 - (a) the transactions may proceed;
 - (b) the Bank 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 Bank, 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 Bank'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

- (1) In any financial year for the Bank, the elected directors' remuneration may not exceed the aggregate amount that the general meeting determines for that year.
- (2) The board may determine the allocation of the aggregate amount of remuneration among the elected directors. If the board does not determine the allocation, the aggregate amount of remuneration must be allocated equally among the elected directors.
- (3) The elected directors' remuneration accrues daily from the day that the general meeting approves the remuneration to the day that the general meeting next determines the elected directors' remuneration.
- (4) The board may determine director's remuneration for any director appointed by the board under Rule 13.1(2), in accordance with the Corporations Law.

17.2 TRAVELLING EXPENSES AND INSURANCE

In addition to any remuneration to which a director may be entitled, the Bank 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 general meetings; and
 - (iii) otherwise in connection with the Bank'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 Bank.

CORPORATIONS LAW COMMENTARY

Section 199A restricts the Bank 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 Bank or a related body corporate;
- liability for pecuniary penalty orders or compensation orders;
- 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; and
 - in connection with proceedings for relief under the Corporations Law where the court denies relief.

Section 199B restricts the Bank 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 INDEMNITIES FOR OFFICERS AND FORMER OFFICERS

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

Division 18 — Administration

18.1 SEAL

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

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 Bank must have at least 1 secretary and at least 1 secretary must reside in Australia.

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

Section 204B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a secretary if the appointment is made with ASIC's permission under s206GAB 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, whatever the terms of the appointment.

18.3 RESIGNATION OF SECRETARY

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

Appendix 1 — Objects

The Bank 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 banks; and
 - (ii) associations of banks;

locally and internationally.

Appendix 2 — Common Bond

A2.1 COMMON BOND — NATURAL PERSON

An individual is eligible to be a member under any one of the following categories:

Category	Description
Employment	The person is: (a) a serving member of the Australian Defence Forces; (b) a serving member of the Australian Defence Force Reserve Forces; (c) a civilian employee of (i) the Australian Government, Department of Defence; (d) an employee or contract employee of companies within the defence industry; (e) an employee of the Bank; (f) a former employee of any of the classes of (a) to (e) above.
Family	The person is a spouse, child, parent, brother or sister of a person admitted as a member under A2-1 Item 1.
Approved Persons	The person has an affinity with the Bank and is approved by the board.
Continuing Members	The person is a member but has ceased to be eligible to be a member in accordance with the above categories
Transferring Members	The person was a member of another ADI that transferred its business and members to the Bank under the Financial Sector (Transfers of Business) Act 1999 (Cth).

A2.2 COMMON BOND — BODY CORPORATE

A body corporate is eligible to be a member under any of the following categories:

Category	Description
Community	A non-public fund approved by the appropriate Services authority to provide specific provisions and services to members of the Australian Defence Forces; A Returned Services League Sub-branch Association; A Returned Services League Club or a Registered Club whose members are predominantly ex-serving members of the Armed Forces of Australia.
Trustee	The body corporate is trustee of a trust of which a member is a beneficiary.
Corporate Group	A body corporate whose majority shareholders are entitled to membership under A2-1.
Depositors and Borrowers	The body corporate was a depositor with, held an account with or received financial accommodation from the Bank without being a member as at 1 July 1999.
Approved Body Corporate	The body corporate has an affinity with the Bank and is approved by the board.
Continuing Members	The body corporate is a member but has ceased to be eligible to be a member in accordance with the above categories.
Transferring Members	The person was a member of another ADI that transferred its business and members to the Bank under the Financial Sector (Transfers of Business) Act 1999 (Cth).

Appendix 3 — Terms of Issue for Shares

Division 1 — Member Shares

A3.1 SUBSCRIPTION PRICE

The subscription price for a member share is \$2.00.

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 A3–4; and
 - (c) the right to redeem the member shares on the terms set out in clause A3–5.
- (2) The restriction on transfer of member shares in clause A3–6 attaches to each member share.
- (3) The Bank 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 Bank has already issued.

Note: For the holder of a member share's entitlement to make deposits with, and receive financial accommodation from, the Bank, 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 general meeting;
 - (b) at a meeting of the class of holders of member shares; and
 - (c) except for holders of member shares who are minors, in a ballot to appoint directors by election.

- (2) At a general meeting or a meeting of the class of holders of member shares:
 - (a) on a show of hands — each holder of member shares other than a minor has 1 vote; and
 - (b) on a poll — each holder of member shares other than a minor has 1 vote for each member share that they hold.

However:

- (c) a member who holds more than 1 member share has 1 vote regardless of the number of member shares held; and
- (d) a member who is a minor has no vote.
- (e) a member is required to service a minimum waiting period of ninety days before being eligible to vote. This condition may be waived by the Bank from time to time.

A3.4 DISTRIBUTION ON WINDING-UP

- (1) On a winding-up of the Bank 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 Bank.
- (2) Each member share carries a right to participate in surplus assets equally with every other member share.
- (3) The Bank 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 Bank.
- (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 Bank may redeem a member share only if the following conditions are satisfied:
 - (a) either:
 - (i) the member has given the Bank notice requesting termination of the member's membership of the Bank under Rule 4.2;
 - (ii) the board has resolved to terminate the member's membership of the Bank under Rule 4.3; or
 - (iii) the board has determined that the member's deposit accounts with the Bank are dormant under Rule 4.4;
 - (b) the Bank can redeem the member share out of:
 - (i) the profits of the Bank; or
 - (ii) the proceeds of a new issue of shares made for the purpose of the redemption.
- (2) On redemption, the Bank 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 TRANSFER OF MEMBER SHARES

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

Division 2 — MCIs

A3.7 SHARE CAPITAL FROM MCIs

- (1) Subject to compliance with the Corporations Law and satisfying the requirements of APRA in prudential standards where applicable, the Bank may raise capital by issuing MCIs or capital instruments convertible into MCIs.
- (2) The Bank may create or issue more MCIs at any time. The creation or issue of more MCIs does not vary the rights attached to MCIs or any other shares that the Bank has already issued (or may issue in future).

A3.8 ISSUE

- (1) The subscription price for an MCI, or a capital instrument convertible to an MCI, will be determined by the board.
- (2) Each MCI must be issued as a fully paid up share.
- (3) Any dividends in respect of an MCI are non-cumulative.

A3.9 RIGHTS OF MCI HOLDERS

- (1) The terms of issue of an MCI (including any terms, conditions or rights attaching to the MCI) will be determined by the board in its sole discretion, subject to the requirements of this Constitution, the requirements for MCIs in the Corporations Law and any applicable prudential standards.
- (2) Subject to the terms of issue of an MCI, an MCI Holder is entitled to a claim on the surplus assets and profits of the Bank in a winding-up of the Bank after all senior claims, including the aggregate subscription price paid for any member shares held by members, have been satisfied and:
 - (a) the MCI Holder's claim ranks equally and proportionately with the claims of all other MCI Holders in the same class of MCIs and members; and
 - (b) the amount of the MCI Holder's claim cannot exceed the subscription price of the MCI.

-
- (3) Notwithstanding anything to the contrary in this Constitution, but subject to the requirements for MCIs in the Corporations Law, the board may determine that the terms of issue of any MCIs contain such terms and conditions or attach such rights as the board considers necessary or desirable for those MCIs to be eligible for inclusion as regulatory capital under any applicable prudential standards.
- (4) The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by special resolution of the Bank and:
- (a) by a special resolution passed at a meeting of MCI Holders holding MCIs in the relevant class; or
 - (b) with the written consent of MCI Holders of at least 75% of the issued MCIs of that class.

Any variation of the rights attached to MCIs which constitute Common Equity Tier 1 Capital (as defined by APRA from time to time) of the Bank is subject to the prior written approval of APRA, if the variation may affect the eligibility of such MCIs for inclusion as Common Equity Tier 1 Capital of the Bank.

- (5) Except as provided by the rules of a licensed CS facility (as defined in the Corporations Law) which apply in relation to an MCI, a person becomes registered as an MCI Holder upon entry by the Bank in its Register of Shareholders of the person's particulars in relation to the MCI as required by the Corporations Law.

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 person 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

A5.1 ELECTION

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

Steps in election procedure	Time
Call for nominations (see clause A5-2(1))	Not less than 56 days before AGM
Nominations close (see clause A5-2(2))	Not less than 21 days after call for nominations
Returning officer must send ballot papers to members (see clause A5- 7(1)) together with notice of the AGM	Not less than 21 days before AGM
Announcement of directors (see clause A5-9(3))	AGM

A5.2 NOMINATIONS

- (1) The board must give members a notice calling for nominations not less than 56 days before the AGM. The board may give this notice, in addition to any of the methods allowed in Rule 1.5, by advertisement:
 - (a) at the Bank's offices; **or**
 - (b) in newspapers.
- (2) The date nominations close:
 - (a) is determined by the board;
 - (b) must be no earlier than 21 days after notice is given under paragraph (1);
 - (c) must be specified in the notice given under paragraph (1).
- (3) 2 members together have the right to nominate a person. To nominate a person, the 2 members must give the Bank a notice of nomination before nominations close. The notice of nomination must:
 - (a) declare that the nominated person is eligible to be a director under Rule 13.2(1);
 - (b) declare that the nominated person is at least 18; and
 - (c) be signed by the nominating members and the nominated person.
- (4) The nominated person must:
 - (a) provide the Bank with all information and consents the Bank reasonably requests to determine if the person is disqualified by law from acting as a director;
 - (b) provide the Director Nominations Committee with all information and documentation that the Director Nominations Committee reasonably requests to determine if the person is of appropriate fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy.
- (5) A nominated person becomes a candidate if and when the Director Nominations Committee:
 - (a) has assessed the person's fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy; and
 - (b) has determined that there is no material reason to find that the person does not have the appropriate fitness and propriety to be and act as a director by reference to the board's Fit and Proper Policy.

A5.3 PROCEEDING WITH ELECTION

- (1) If the number of candidates is equal to or less than the number of positions to be filled:
 - (a) the general meeting may appoint each candidate as a director by passing a separate resolution at the AGM;
 - (b) the election process otherwise set out in this Appendix is discontinued; and
 - (c) the following information must be included in or with the notice of AGM:
 - (i) a statement that the election process has been discontinued;
 - (ii) the name of each candidate; and
 - (iii) a statement that the general meeting will vote on the appointment of each candidate as a director by a separate ordinary resolution at the AGM.

A5.4 APPOINTMENT OF RETURNING OFFICERS

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

A5.5 APPOINTMENT OF SCRUTINEER

- (1) A candidate may appoint a scrutineer.
- (2) The duties and responsibilities of scrutineers are:
 - (a) to observe the sorting, counting and recording of ballot papers;
 - (b) to ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and
 - (c) to raise any query with the returning officer regarding any of the ballot papers.

A5.6 BALLOT PAPERS

- (1) After nominations have closed, the returning officer must prepare ballot papers for the election.

- (2) The order in which the candidates appear on the ballot paper is to be determined by the returning officer by lot.
- (3) The returning officer must ensure some authenticating mark appears on each ballot paper before issuing them to the members.
- (4) The returning officer may send ballot papers to members by email where an email address has been supplied to the Bank. The email shall include instructions and a link on how to vote online in lieu of other methods.
- (5) If an attempt has been made to send the email to the member's last known email address and it is not received for any reason whatsoever, the Bank is not obliged to resend ballot papers unless requested by the member.

A5.7 POSTAL VOTE

- (1) The returning officer must send to each member at least 21 days before the AGM:
 - (a) a ballot paper;
 - (b) an unsealed envelope, addressed to the returning officer, the reverse side of which bears the following:

.....
Name of member
.....

Signature of member or corporate member's representative

- (2) The returning officer must send ballot papers by mail or prepaid post and addressed to each member at the address shown in the Register of Members for the purposes of giving notices.
- (3) A member exercising a right to vote must:
 - (a) first complete the ballot papers in accordance with this Constitution;
 - (b) secondly, place the ballot papers in the envelope; and
 - (c) thirdly, complete the envelope and return it by post to the returning officer.
- (4) A member must ensure that the returning officer receives the member's ballot papers by 5.00pm on the day fixed for the closing of the ballot.
- (5) Any ballot paper that the returning officer receives after the ballot closes is informal.
- (6) A member who does not receive their ballot papers of who

spoils them must give the returning officer a declaration to that effect. Upon notification, the returning officer must then send duplicate ballot papers to that member.

A5.8 CLOSURE OF THE BALLOT

The ballot closes 7 days before the AGM.

A5.9 PROCEDURES AFTER CLOSE OF THE BALLOT

- (1) As soon as practicable after the ballot closes, the returning officer must ensure that the ballots are dealt with as follows:
 - (a) for each set of ballot papers, mark the member's name off a roll of members;
 - (b) if a duplicate set of ballot papers has been sent to a member and the original envelope received — mark the original envelope “rejected”;
 - (c) if the member or the member's corporate representative has not signed the envelope, or there is insufficient detail to identify the member — mark the envelope “rejected”;
 - (d) extract the ballot papers from all unrejected envelopes;
 - (e) supervise the scrutinising of the ballot papers and reject informal ballot papers;
 - (f) count the votes;
 - (g) sign a declaration of the ballot as to the:
 - (i) names of the candidates appointed as directors;
 - (ii) votes cast for each candidate;
 - (iii) number of votes rejected as informal; and
 - (h) deliver the declaration to the secretary.
- (2) A ballot paper is informal if:
 - (a) it is not authenticated by the returning officer;

- (b) it has no vote indicated on it; or
 - (c) it does not indicate the member's preference for a candidate.
- (3) The secretary must announce the results of the ballot at the next AGM.
- (4) If a member gives the Bank a written request, the Bank 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.

A5.10 VOTING SYSTEM

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

A5.11 IRREGULARITY IN THE CONDUCT OF AN ELECTION

- (1) The candidates that the returning officer declares to have been appointed are appointed unless the secretary receives an objection to the ballot within 7 days of the end of the AGM.
- (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.

A5.12 ELECTRONIC VOTING

- (1) If the Bank has an Electronic Voting System which permits members to vote for the election of directors by electronic

means, then the board may determine:

- (a) that the members may record their votes in the election by electronic means; and
- (b) the manner in which members will be identified for the purposes of voting in the election.

(2) If the board makes such a determination:

- (a) members may vote by post or by electronic means, but may only vote once;
- (b) the information referred to in Rule A5-5(2) may be made available for access by members by electronic means;
- (c) the returning officer shall provide an interactive copy of the ballot paper in a secure online system to facilitate voting by electronic means and make available to members all information reasonably necessary to facilitate voting by electronic means. Requirements for an authenticating mark of the returning officer on the ballot paper shall not apply, but the returning officer must ensure that a member cannot vote by electronic means more than once in the election;
- (d) a member who votes by electronic means must ensure that his or her vote is submitted to the returning officer in accordance with any instructions given for voting by electronic means;
- (e) in respect of any vote received by the returning officer by electronic means, the returning officer must ensure that the fact that the member has voted is recorded;

- (f) the returning officer must cause all votes received by electronic means to be recorded in such a way that they cannot subsequently be identified with any particular member;
- (g) if a member lodges both a vote by post and a vote by electronic means, then the returning officer must:
 - (i) if one of the votes is informal, accept the formal vote; and
 - (ii) if both votes are formal, accept the vote received first.
- (h) the election procedures set out in the preceding Rules of Appendix 5 are deemed to be otherwise modified to the extent necessary to permit voting by electronic means.
- (i) the member is responsible for ensuring that their email contact details remain correct and up to date.

A5.13 VOTE COUNTING

- (1) The counting of votes may be undertaken manually, electronically or by using scanning technology and equipment or a combination of such methods.

Appendix 6 — Director Nominations Committee

A6.1 APPOINTMENT OF DIRECTOR NOMINATIONS COMMITTEE

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

A6.2 ROLE OF COMMITTEE

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

A6.3 DUTY OF CONFIDENTIALITY

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

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