

Schedule 3 — Model rules of a distributing co-operative with share capital

[r. 6]

Rules of a distributing co-operative with share capital registered under the *Co-operatives Act 2009*

1. Terms used

In these rules —

active member means a member who is in active membership under clause 5;

auditor means a registered company auditor or auditors (within the meaning of that term in the Corporations Act) for the time being of the co-operative;

CCU means a co-operative capital unit;

director includes alternate director;

financial institution account means an account at a financial institution into which the co-operative's money may be paid;

financial year means the financial year of the co-operative specified in clause 64;

member means a member of the co-operative;

regulations means the *Co-operatives Regulations 2010*;

special resolution means a resolution passed in accordance with clause 47(1), (2) and (3).

[Clause 1 amended: Gazette 2 Dec 2016 p. 5436.]

2. Rules

- (1) The rules of the co-operative have the effect of a contract under seal —
 - (a) between the co-operative and each member; and
 - (b) between the co-operative and each director, the chief executive officer and the secretary of the co-operative; and
 - (c) between a member and each other member.

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- (2) Under the contract, each of those persons agrees to observe and perform the rules as in force for the time being so far as those provisions apply to the person. [s. 97]
- (3) The rules may be altered by a special resolution, [s. 104] by a resolution of the board in accordance with section 105 of the Act or as otherwise permitted by the Act.
- (4) If alteration to these rules under section 28(3A) of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar. [s. 103]
- (4A) If alteration to these rules under section 103 of the Act requires prior approval of the Registrar following an order made under section 103(1B), the proposed alteration cannot be put to a resolution unless it is approved by the Registrar. [s. 103]
- (5) An alteration to these rules does not take effect until it is registered by the Registrar. [s. 106]
- (6) A member is entitled to obtain a copy of the rules on payment of \$ (maximum \$11.60 for the first page and \$1.50 for each additional page, up to a maximum of \$86.60 or if no fee is fixed, \$5.00). [s. 99(1)]
- (7) Any person may obtain a copy of these rules from the Registrar on payment of the prescribed fee. [s. 99(3)]

[Clause 2 amended: Gazette 2 Dec 2016 p. 5436.]

3. Powers

The co-operative has the power of an individual and the ability to restrict or place additional powers in the rules. [s. 39]

4. Name

- (1) The name of the co-operative is [s. 238]
- (2) The co-operative may change its name under section 241 of the Act.
- (3) The co-operative may abbreviate its name under section 239 of the Act.

5. Active membership provisions

(1) Under Part 6 of the Act —

Primary activity

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is a primary activity of the co-operative; and

Active membership requirements

a member must —

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to establish active membership of the co-operative.

(2) All members of a co-operative must be active members.

(3) Subject to sections 123 and 124 of the Act, a member who fails to be or ceases to be an active member must, under the Act, have their membership cancelled and, subject to section 127 of the Act, their shares forfeited.

6. Qualifications for membership

(1) Every member must hold at least shares.

(2) A person is not qualified to be admitted to membership of the co-operative unless there are reasonable grounds for believing the person will be an active member of the co-operative. [s. 58]

(3) Despite subclause (2), a person who was a member of a co-operative immediately before that co-operative became a transferred

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co-operative is qualified despite the absence of reasonable grounds for believing that the person will be an active member of the co-operative. [s. 58]

7. Membership, subscriptions, periodic fees

- (1) The co-operative must give to a person intending to become a member —
 - (a) a copy of the documents required to be given under section 68(1) of the Act, whether or not the person requests a copy of any or all of those documents; and
 - (b) written notice of entry fees or regular subscriptions payable by a member of the co-operative. [s. 69]
- (2) Applications for membership, shares or bonus shares or additional shares must be lodged at the registered office in the application form approved by the board, together with the amount required to pay the shares fully or, if the shares are to be issued partly paid, a deposit of \$ for each share applied for.
- (3) Every application must be considered by the board.
- (4) If the board approves of the application —
 - (a) the board must —
 - (i) allot the shares applied for; or
 - (ii) approve the transfer of the minimum number of shares to be held by a member under these rules from an existing member to the applicant;and
 - (b) the applicant's name, the number of shares allotted or transferred and any other information required under the Act must be entered in the register of members within 28 days of the board's approval.
- (5) The applicant must be notified in writing of the allotment and of the entry in the register and the applicant is then entitled to the privileges attaching to membership, or to the holding of shares, or bonus or additional shares, as is appropriate.

- (6) The board may, at its discretion, refuse an application for membership or shares (other than additional shares the subject of a compulsory issue under section 146 of the Act).
- (7) The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded within 28 days without interest.

[Clause 7 amended: Gazette 2 Dec 2016 p. 5436.]

8. Ceasing membership

A person ceases to be a member in any of the following circumstances —

- (a) if the member's membership is cancelled under the Act Part 6 (Active membership);
- (b) if the member is expelled under these rules;
- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
- (g) if the member's total shareholding is forfeited under the Act or these rules;
- (h) if the member's total shareholding is purchased by the co-operative under these rules;
- (i) if the member's total shareholding is sold by the co-operative under any power in these rules and the purchaser is registered as shareholder in the member's place;
- (j) if the amount paid up on the member's shares is repaid to the member under these rules;
- (k) on written notice of the member's resignation from membership, given by the member to the secretary;

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- (l) for a corporation — if the corporation becomes insolvent or is deregistered. [s. 63, 64]

9. Expulsion of members

- (1) A member may be expelled from the co-operative by special resolution to the effect —
 - (a) that the member has failed to discharge the member's obligations to the co-operative under these rules or a contract; or
 - (b) that the member has acted in a way that has —
 - (i) prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
 - (ii) brought the co-operative into disrepute; or
 - (iii) been contrary to one or more co-operative principles as described in section 6 of the Act and has caused the co-operative harm.
- (2) Written notice of the proposed resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- (3) If a general meeting is to be called under this clause the following procedures apply —
 - (a) at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross examine witnesses called against the member;
 - (b) if the member fails to attend at the time and place mentioned, without reasonable excuse, the act must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
 - (c) once the act is considered, the co-operative may decide to expel the member who committed the act;
 - (d) the co-operative must not make a decision on the act or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and

entitled to vote. A motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion.

- (4) Expulsion of one joint member means expulsion of all members holding membership jointly with the expelled member.
- (5) An expelled member must not be re-admitted as a member unless the re-admission is approved by special resolution. A member re-admitted must not have restored to him or her any shares that were cancelled on his or her expulsion. [s. 73]

10. Monetary consequences of expulsion

- (1) In this clause —
deficiency means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or subsequently reported prior to expulsion.
- (2) If a member is expelled from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (3) The shares of an expelled member must be cancelled as at the day of expulsion and the cancellation must be noted in the register of shares.
- (4) Subject to subclause (5) and the written terms of a class of share issued, the co-operative must, however, pay to the expelled member the amount of capital paid up on the former member's shares at the time of expulsion (less any amount owing by the former member to the co-operative).
- (5) If a deficiency exists, an appropriate proportion of the loss, deficiency or significant change may be deducted from the amount of capital paid up on the shares of the expelled member. This is done having regard to the number of shares held by the expelled member immediately prior to expulsion in relation to the number of shares in the co-operative.

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- (6) Payment to the expelled member of any amount owing by the co-operative to the former member —
- (a) must be made —
 - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(a)]; or
 - (ii) in the case of a transferred co-operative, within 3 years from the date of expulsion and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];

or

 - (b) may be applied —
 - (i) at the time decided by the board but within one year from the date of expulsion [s. 73(1)(c)]; and
 - (ii) in the manner set out in section 73(2) to (4) of the Act if there is agreement by the board and former member, or if the board considers that repayment would adversely affect the financial position of the co-operative.

11. Suspension of members

- (1) The co-operative may suspend a member for not more than one year, who does any of the following acts —
- (a) contravene any of these rules;
 - (b) fail to discharge obligations to the co-operative, whether under these rules or a contract;
 - (c) act detrimentally to the interests of the co-operative.
- (2) In order to suspend a member, the procedure for expulsion of a member set out in clause 9 is to be followed as if references to expulsion were references to suspension.
- (3) During the period of suspension, the member —
- (a) loses any rights (except the right to vote) arising as a result of membership; and
 - (b) is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the co-operative; and

- (c) remains liable for any fine that may be imposed.

12. Payments upon resignation of member

- (1) In this clause —
deficiency means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or subsequently reported prior to resignation.
- (2) If a member resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (3) The shares of a resigning member must be cancelled as at the day of the resignation and the cancellation must be noted in the register of shares.
- (4) If a deficiency exists an appropriate proportion of the loss, deficiency or significant change may be deducted from the amount of capital paid up on the shares of the resigning member. This is done having regard to the number of shares held by the resigning member immediately prior to resigning in relation to the number of shares in the co-operative.
- (5) Payment to the resigning member of any amount owing by the co-operative to the former member —
- (a) must be made —
- (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(a)]; or
- (ii) in the case of a transferred co-operative, within 3 years from the date of resignation and in accordance with the relevant rules of that co-operative [s. 73(1)(b)];
- or
- (b) may be applied —
- (i) at the time decided by the board but within one year from the date of resignation [s. 73(1)(c)]; and
- (ii) in the manner set out in section 73(2) to (4) of the Act if there is agreement by the board and former

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member, or if the board considers that repayment would adversely affect the financial position of the co-operative.

13. Disputes and mediation

- (1) The grievance procedure set out in this clause applies to disputes under the rules between a —
 - (a) member and another member; or
 - (b) member or members and the co-operative.
- (2) If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.
- (3) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of —
 - (a) the dispute coming to the attention of each party; or
 - (b) a party giving notice to each of the other parties involved, of the dispute or grievance.
- (4) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.
- (5) The mediator must be —
 - (a) a person chosen by agreement between the parties; or
 - (b) in the absence of agreement —
 - (i) for a dispute between a member and another member, a person appointed by the board of the co-operative; or
 - (ii) for a dispute between a member(s) and the co-operative, a person appointed by the Supreme Court of Western Australia.
- (6) A member of the co-operative can be a mediator.
- (7) The mediator cannot be a member who is a party to the dispute.

- (8) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (9) The mediator, in conducting the mediation, must —
 - (a) give the parties to the mediation process every opportunity to be heard; and
 - (b) allow due consideration by all parties of any written statement submitted by any party; and
 - (c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (10) The mediator cannot determine the dispute.
- (11) The mediation must be confidential and without prejudice.
- (12) The costs of the mediation are to be shared equally between the parties unless otherwise agreed.
- (13) Nothing in this clause extends to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.
- (14) Nothing in this clause extends to any dispute involving the expulsion or suspension of a member or the imposition of a fine.
- (15) If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Act or otherwise at law.

14. Fines payable by members

- (1) The board may impose on a member a maximum fine of \$ (not more than \$1 000) for a contravention of the rules.
- (2) A fine must not be imposed on a member under subclause (1) unless —
 - (a) written notice of intention to impose the fine and the reason for it has been given to the member; and
 - (b) the member has been given a reasonable opportunity to appear before the board in person (with or without witnesses), or to send to the board a written statement, to show cause why the fine should not be imposed.

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15. Capital and shares

- (1) The capital of the co-operative must be raised by the issue of shares of nominal value of \$ each.* [s. 140(2)]

*Note for this subclause:

Any shares held by a co-operative in itself at the time the co-operative is registered under the Act are cancelled under section 165.

- (2) A member is not entitled to hold more than 20% of the nominal value of issued share capital of the co-operative other than under section 278 of the Act.
- (3) The capital varies in amount according to the nominal value of shares from time to time subscribed.
- (4) No share is to be allotted unless at least 10% of the nominal value of the share has been paid.*

*Note for this subclause:

Subclause (4) does not apply to a transferred co-operative.

- (5) A share must not be issued at a discount.
- (6) The board may require a member to take up or subscribe for additional shares under a proposal approved of by the members by special resolution under section 146 of the Act.
- (7) Bonus shares may be issued by the co-operative under sections 147 and 271 of the Act.
- (8) Shares of the co-operative must not be quoted for sale or purchase at any stock exchange or in any other public manner whatsoever (within the meaning of the *Income Tax Assessment Act 1936* (Commonwealth)).
- (9) Under section 255 of the Act, the co-operative is authorised to require members to lend money to the co-operative, under a proposal approved by special resolution of the co-operative passed by special postal ballot.

[Clause 15 amended: Gazette 2 Dec 2016 p. 5437.]

16. Liability of members to co-operatives

- (1) A member is, under section 67 of the Act, liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges, including entry and periodic fees, payable by the member to the co-operative under these rules.
- (2) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place. [s. 63(2)]
- (3) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in subclause (1).

17. Calls on shares

- (1) The board may from time to time make calls on the members for any amounts unpaid on the shares of the members (whether on the nominal value of the shares or by way of premium) and not by the terms of issue of the shares made payable at fixed times.
- (2) Each member must, on receiving at least 14 days' notice of the time and place of payment, pay to the co-operative, at the time and place specified, the amount called on the shares.
- (3) The directors may revoke or postpone a call.
- (4) A call is taken to have been made when the resolution of the directors authorising the call was passed and may be required to be paid by instalment.
- (5) The joint holders of a share are jointly and severally liable to pay all calls for the share.
- (6) If an amount called for a share is not paid before or on the day fixed for payment of the amount, the person from whom the amount is due must pay interest on the amount from the day fixed for the payment of the amount to the time of actual payment at the rate, not more than 16% per annum, the directors decide, but the directors may waive payment of all or part of the interest.
- (7) An amount that, under the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal

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value of the share or by way of premium, is for these rules taken to be a call made and payable on the day that, under the terms of issue, the amount becomes payable and, if the amount is not paid, all relevant provisions of these rules about payment of interest and expenses, forfeiture or otherwise apply as if the amount had become payable under a call properly made and notified.

- (8) The board may, in relation to the issue of shares, differentiate between the holders in the amount of calls to be paid and the times of payment.
- (9) The board may accept from a member all or part of the money uncalled and unpaid on shares held by the member.
- (10) The board may authorise payment by the co-operative of interest on all or part of an amount accepted under subclause (9) until the amount becomes payable, at a rate agreed between the board and the member paying the amount, of not more than 8% per annum or another rate fixed by the co-operative by special resolution.

18. Sale of members' shares

- (1) A member's share may only be sold in accordance with sections 64, 158, 163 and 165 of the Act.
- (2) Subject to section 163 of the Act the co-operative may —
 - (a) purchase any share of a member at the request of the member; and
 - (b) repay to a member, with the member's consent, all or part of the amount paid up to the stated nominal value on any share held by the member when the amount repaid is not required for the activities of the co-operative.
- (3) The co-operative must cancel a share purchased by or forfeited to the co-operative.
- (4) If, in the opinion of the board, payment of the repurchase price would adversely affect the financial position of the co-operative, the board may exercise any of the following options instead of paying the sum to the member — [s. 164]
 - (a) for a deposit taking co-operative apply the amount as an interest bearing deposit by the member with the co-operative;

- (b) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (5) A deposit, debenture or CCU issued under subclause (4) —
 - (a) bears interest during any period as decided under section 164 of the Act; and
 - (b) must be repaid to the member as soon as repayment would not, in the opinion of the board, adversely affect the financial position of the co-operative, and in any case, within 10 years.

19. Transfer and transmission of shares

- (1) The instrument of transfer of a share must be signed by or for the transferor (the *giver*) and the transferee (the *receiver*).
- (2) The giver is taken to remain the holder of the share until the name of the receiver is entered in the register of members. [s. 161]
- (3) Shares must be transferred in the following form or another form approved by the board —

I, A.B. (the giver) of in the State
of in consideration of the sum of \$ paid
to me by C.D. (the receiver), of
in the State of transfer to the receiver the
share (or shares) numbered in the
(name of co-operative)

to hold for the receiver, the receiver’s executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution.

And I, the receiver, agree to take the said share (or shares) subject to the conditions previously mentioned in this document.

Dated this day of 20

Signed by giver.

In the presence of witness.

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Signed by receiver.

In the presence of witness.

- (4) A share may not be sold or transferred except —
 - (a) with the consent of the board, and to a person who is qualified to be admitted to membership of the co-operative under clauses 5 and 6; or
 - (b) as otherwise provided by these rules or the Act. [s. 158(2)]
- (5) The board may decline to register a transfer of shares to a person not qualified to be a member or of whom they do not approve. The board may also decline to register a transfer of shares on which the co-operative has a lien or charge. If the board refuses to register a transfer of shares it must send notice of the refusal to the receiver within 28 days after the day the board declined to register the transfer.
- (6) The board of the co-operative must not consent to the sale or transfer of shares that would result in more than the nominal value of shares permitted under section 278 of the Act to be held by a member.
- (7) The board may decline to recognise an instrument of transfer unless —
 - (a) a fee of \$ (or the lesser sum decided by the board from time to time) is paid to the co-operative for the transfer; and
 - (b) the instrument of transfer is accompanied by any evidence the board may require to show the right of the giver to make the transfer.
- (8) The board must maintain a record of all transfers made in the proper books of the co-operative.
- (9) The board may suspend the registration of transfers during the 45 days immediately preceding the annual general meeting in each year.

[Clause 19 amended: Gazette 2 Dec 2016 p. 5452; 4 Aug 2017 p. 4308.]

20. Effect of sale, transfer or disposal of shares

A member who has sold or transferred, or disposed of the beneficial interest in, the member's shares, or has agreed to do any of those things, is not entitled to vote at any meeting of the co-operative.

21. Forfeiture and cancellations: inactive members

- (1) Subject to sections 123 and 124 of the Act, the board must declare the membership of a member cancelled if — [s. 120]
 - (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of at least years [not more than 3 years, s. 120]; or
 - (b) the member is not presently an active member and has not been an active member at any time in the past years [not more than 3 years, s. 120].
- (2) Subclause (1) applies to a member if he or she was a member of the co-operative throughout the year period [not more than 3 years, s. 120].
- (3) Unless subclause (4) applies, the board of a co-operative must ensure that notice of its intention to declare the membership of a member to be cancelled is given to the member not less than 28 days prior to the intended day of the cancellation.
- (4) Notice is not required to be given under subclause (3) if —
 - (a) the member's whereabouts are unknown to the co-operative; or
 - (b) the amount required to be repaid to the member in relation to the cancelled membership, whether because of the cancellation of shares or otherwise, does not exceed \$100 or such other amount as may be prescribed under section 125(2) of the Act.
- (5) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts payable for the cancellation and forfeiture must be dealt with and repaid under section 127 of the Act.

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- (6) The co-operative must keep a register of cancelled memberships under subclause (1), that must include the particulars in Schedule 4 clause 5 of the regulations.

[Clause 21 amended: Gazette 2 Dec 2016 p. 5437.]

22. Forfeiture of shares

- (1) If a member fails to pay a call or instalment of a call by the day appointed for payment, the board may, at any time any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that may have accrued.
- (2) The notice must name a further day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares for which the call was made will be liable to be forfeited.
- (3) If the requirements of the notice served under this clause are not complied with, any share in respect of which the notice has been given, may at any time (but before the payment required by the notice has been made) be forfeited by a resolution of the board.
- (4) Such a forfeiture must include all dividends declared for the forfeited shares and not actually paid before forfeiture.

23. Forfeited shares

- (1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Act. The person nevertheless remains liable to pay to the co-operative all amounts that are (as at the date of forfeiture) payable by him or her to the co-operative for the shares.
- (2) A statutory declaration in writing by a director, the chief executive officer or secretary of the co-operative stating that a share in the co-operative has been forfeited on a date stated in the declaration, is proof of that fact as against all persons claiming to be entitled to the share.

- (3) The co-operative, under clause 27, has a charge on the paid up amounts of the forfeited shares and may appropriate those amounts under clause 27(2). [s. 72(3)]

24. Forfeiture for non-payment of subscription

- (1) The shares of a member whose periodic fee (subscription) under clause 7 has not been paid may be forfeited by resolution of the board.
- (2) Written notice of the proposed forfeiture must be given to the member at least 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved and the member must be given an opportunity of being heard at the meeting.
- (3) Clause 23 applies to the forfeiture.
- (4) Subject to section 127 of the Act and subclause (5), payment to the member of any amount due under this clause must be made at the time decided by the board, but within one year from the date of forfeiture.
- (5) Subject to section 127 of the Act, instead of payment of an amount due to a member whose membership is cancelled, the amount due may be applied as a deposit if the co-operative takes deposits, or the co-operative may allot or issue debentures or CCUs in satisfaction of the amount, or if the member consents in writing the amount may be appropriated as a donation.

25. Death of member

- (1) Subject to section 159 of the Act, the board must transfer a deceased member's share or interest in the co-operative to —
- (a) the personal representative of the deceased, that is, an executor or administrator of the estate of the deceased; or
 - (b) the person specified by the deceased's personal representative, in an application made to the co-operative within 3 months after the death of the member.
- (2) The board may approve the transfer of a share or interest to a person other than the executor or administrator if the board is satisfied that —
- (a) there are reasonable grounds for believing the proposed transferee will be an active member of the co-operative; or

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- (b) the proposed transferee is qualified to be a member of the co-operative under these rules; [s. 75(b) & 159] or
 - (c) the transfer would not increase the proposed transferee's holding in the co-operative beyond that allowed by the Act or these rules. [s. 160]
- (3) If the total value of the deceased member's share or interest in the co-operative is less than \$10 000 or another amount fixed by the regulations, the board may transfer the share or interest under section 76 of the Act if there has not been a grant of letter of administration or of probate of the deceased's will. [s. 76]
- (4) Under section 77 of the Act, the board must decide the value of the shares and interest of a deceased member as the amount paid up on the shares together with any other amounts due to the deceased member less any amounts owing to the co-operative by the deceased member.

26. Dealings of members with co-operatives

- (1) The co-operative may, under section 70 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (2) The contract may require a member —
- (a) to sell products through or to the co-operative; or
 - (b) to obtain supplies or services through or from the co-operative; or
 - (c) to pay to the co-operative specified amounts as liquidated damages for a contravention of a requirement authorised by this clause.
- (3) Any amount specified as liquidated damages is to be considered as a debt payable to the co-operative for which the co-operative has, under section 72 of the Act, a charge on each of the following —
- (a) the share or interest in the capital and the credit balance and deposits of the member or past member;
 - (b) any dividend, interest, bonus or rebate payable to the member or past member;

- (c) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.
- (4) The charge created under section 72 of the Act shall be enforced under that section and clause 27.

27. Charges on shares

- (1) The co-operative, as provided in section 72 of the Act, has a charge on the share or interest in the capital, and on the credit balance and deposits of a member or past member, and on any dividend, interest, bonus or rebate payable to a member or past member, in respect of any debt due from the member or past member to the co-operative. The co-operative may also set off any amount paid on account of that share or otherwise or any amount credited or payable to the member or past member in or towards payment of the debt.
- (2) The charge may be enforced at any time after 7 days notice to the member or past member, by the appropriation by the co-operative of the capital, interest or deposit subject to the charge. Any share for which capital has been appropriated must be cancelled.
- (3) The co-operative may sell, in the way the directors consider appropriate, all or any shares on which the co-operative has a charge. However, no sale can be made unless some amount for which the charge exists is payable at the date of the sale. Also no sale can be made until the end of 14 days after a written notice (stating, and demanding payment of, the part of the amount for which the charge exists as is payable at the day the notice is given) has been given to the registered holder of the share or the person entitled to it because of death or bankruptcy. The notice must indicate that, on failure to make payment of the amount demanded within the time stipulated, the shares will be sold by the board.
- (4) If the highest offer received by the board is less than the amount paid up on shares to be sold, the board must, before accepting the offer, notify the member of the receipt of the offer and the amount of the offer, and of the board's intention to accept the offer at the end of 14 days, if no payment is made before then to the co-operative of all amounts for which the charge exists.

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- (5) From the proceeds of any such sale the co-operative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member. However, if a surplus remains after such deduction, the surplus is payable to the member whose shares were sold.
- (6) For giving effect to a sale the board may authorise a person to transfer the shares sold to the purchaser of them.

28. Registration of Official Trustee in Bankruptcy

- (1) If a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the shares or other interests held by the bankrupt member. [s. 154]
- (2) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of both the co-operative and the holder of the share. [s. 154]

29. Registration as administrator of estate on incapacity of member

A person appointed under a law of a State or a Territory to administer the estate of a member who, through mental or physical infirmity is incapable of managing his or her affairs, may be registered as the holder of the member's share. [s. 153, 158]

30. Entitlements and liabilities of person registered as trustee, administrator etc.

- (1) A person becoming entitled to be a shareholder because of the death, bankruptcy or incapacity of the holder is entitled to the dividends and other advantages to which that person would be entitled if he or she were the registered holder of the share or shares. However, before being registered as a member, the person is not entitled to exercise any right conferred by membership in relation to meetings of the co-operative.
- (2) A person registered under clause 25, 28 or 29 has, while registered, the same liabilities in relation to the share or shares as those to which the dead person, the bankrupt person or the incapable person would have been liable if he or she had remained a member with full legal capacity.

- (3) The board has the same right to decline or to suspend registration of a share as it would have had for a transfer of a share by the bankrupt or incapacitated person before the bankruptcy or incapacity.

31. Transfer and transmission of debentures

- (1) On the written request of the transferor (the *giver*) of a debenture, the co-operative must enter in the appropriate register the name of the transferee (the *receiver*) in the same way and on the same conditions as if the application for entry were made by the receiver.
- (2) If the co-operative refuses to register a transfer of debentures it must, within 28 days after the date on which the transfer was lodged with it, send to the receiver notice of the refusal.
- (3) An instrument of transfer of a debenture must be executed by or on behalf of the giver and the receiver. The giver is taken to remain the holder of the debenture until the debenture in the name of the receiver is entered in the register of debentures.
- (4) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless —
- (a) a fee of \$ (or a lesser amount decided by the board) is paid to the co-operative for the transfer of registration; and
 - (b) the instrument of transfer is accompanied by the relevant debenture(s) and any other evidence the board reasonably requires; in particular, evidence showing the right of the giver to make the transfer; and
 - (c) any government stamp duty payable is paid.
- (5) Debentures must be transferred in the following form or in a form approved by the board —
- I, A.B. (the giver) of in the State of in consideration of the sum of \$ paid to me by C.D (the receiver), of in the State of transfer to the receiver the debenture(s) numbered to be held by the receiver, the

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receiver's executors, administrators and assigns, subject to any conditions on which I hold the debenture(s) and any other conditions being terms of the transfer of the debenture(s).

And I, the receiver agree to take the debenture(s) subject to the conditions mentioned.

Dated this day of20

Signed by giver.

In the presence of witness.

Signed by receiver.

In the presence of, witness.

[Clause 31 amended: Gazette 2 Dec 2016 p. 5452; 4 Aug 2017 p. 4308.]

32. Issue of CCUs

- (1) The board of the co-operative may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Act.
- (2) The board of the co-operative may issue CCUs to a person, whether or not that person is a member of the co-operative. [s. 260]
- (3) Each holder of a CCU is entitled to one vote per CCU held at a meeting of the holders of CCUs.
- (4) The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting.
- (5) The holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative.
- (6) The holder of a CCU is entitled to receive notice of all relevant meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.*

*Note for this subclause:

Debenture holders receive notice of meetings of debenture holders not general meetings of the co-operative.

33. Transfer and transmission of CCUs

- (1) Subject to this clause, the transfer and transmission of a CCU is to follow the same process as for a debenture under clause 31.
- (2) Where the terms of issue of a CCU differ from clause 31 in respect to the manner of transfer or transmission, the terms of its issue prevail.

34. Annual general meetings

- (1) An annual general meeting must, under section 190 of the Act, be held each year at a place and on a date and a time decided by the board within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar or fixed under a regulation. [s. 190]

Note for this subclause:

See section 190(1) and (2) for the meeting times for the first AGMs of new and transferred co-operatives.

- (2) A general meeting of the co-operative other than the annual general meeting must be a special general meeting.
- (3) If an annual general meeting is not held as required by subclause (1), the members may, under section 195 of the Act and clause 35 of these rules, requisition a special general meeting.

35. Special general meetings

- (1) The board may, whenever it considers appropriate, call a special general meeting of the co-operative.
- (2) The board must call a general meeting of the co-operative on the requisition in writing by members who together are able to cast at least% (max 20%) of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The requisition must —
 - (a) state the objects of the meeting; and

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- (b) be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members); and
 - (c) be served on the co-operative by being lodged at the co-operative's registered office.
- (4) A meeting requisitioned by members under these rules must be called and held as soon as practicable and in any case must be held within 2 months after the requisition is served.
- (5) If the board does not call a meeting within 35 days after the requisition is served, the following provisions apply —
 - (a) the requisitioning members (or any of them representing at least half their total voting rights) may call the meeting in the same way, as nearly as possible, as meetings are called by the board;
 - (b) for that purpose they may ask the co-operative to supply a written statement of the names and addresses of the persons entitled, when the requisition was served, to receive notice of general meetings of the co-operative;
 - (c) the board must send the statement to the requisitioning members within 7 days after the request for the statement is made;
 - (d) the meeting called by the requisitioning members must be held within 3 months after the requisition is served;
 - (e) the co-operative must pay the reasonable expenses incurred by the requisitioning members because of the board's failure to call the meeting;
 - (f) any amount required to be paid by the co-operative is to be retained by the co-operative out of amounts payable by the co-operative for fees or other remuneration for their services to the directors who were in default. [s. 195]

36. Notice of general meetings

- (1) At least 14 days notice (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given to every member of any general meeting, in the way stipulated in clause 74.

- (2) Notice must be given to the persons who are, under these rules, entitled to receive notices from the co-operative, but the non-receipt of the notice does not invalidate the proceedings at the general meeting.
- (3) The notice must state the place, day and hour of the meeting and, for special business, the general nature of the business.
- (4) For a special resolution, notice of —
- (a) the intention to propose the special resolution; and
 - (b) the reasons for proposing the special resolution; and
 - (c) the effect of the special resolution being passed,
- must be given at least 21 days before the meeting. [s. 177]
- (5) Members who together are able to cast at least % (max 20%) of the total number of votes that are able to be cast at a meeting of the co-operative and who have a resolution to submit to a general meeting must give written notice of it to the co-operative at least 45 days before the day of the meeting.
- (6) In a notice calling a general meeting, the board must include any business members have notified their intention to move at the meeting under subclause (5) (provided the members' notification has been made under these rules and within time).

[Clause 36 amended: Gazette 2 Dec 2016 p. 5437.]

[37. Deleted: Gazette 2 Dec 2016 p. 5437.]

38. Business of general meetings

- (1) The ordinary business of the annual general meeting must be —
- (a) to confirm minutes of the last preceding general meeting (whether annual or special); and
 - (b) to receive from the board, auditors or officers of the co-operative —
 - (i) the financial reports of the co-operative for the financial year; and
 - (ii) a report on the state of affairs of the co-operative.

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- (2) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- (3) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

39. Quorum at general meetings

- (1) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item. [s. 193]
- (2) Unless these rules state otherwise ... members present in person, each being entitled to exercise a vote, constitute a quorum. [s. 193]
- (3) If a quorum is not present within half an hour after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- (4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the members present constitute a quorum.

40. Chairperson at general meetings

- (1) The chairperson, if any, of the board may preside as chairperson at every general meeting of the co-operative.
- (2) If there is no chairperson, or if at a meeting the chairperson is either not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, then the members present must choose someone from their number to be chairperson (until the chairperson attends and is willing to act).
- (3) The chairperson may, with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place. However, the only business that can be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 14 days or more, notice of the adjourned meeting must be given just as for the original meeting. Apart from this it is not necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

41. Attendance and voting at general meetings

- (1) The right to vote attaches to membership and not shareholding.
- (2) Joint members have only one vote between them.
- (3) Every joint member is entitled to attend and be heard at a general meeting.
- (4) In the event of a dispute between joint members as to which member will vote (subject to the grant of any proxy or power of attorney) the joint member whose name appears first in the register of members will vote.
- (5) A resolution, other than a special resolution, must be decided by simple majority.

Note for this subclause:

The requirements for a special resolution are in section 177 of the Act.

- (6) Subject to subclauses (7) and (8), at any general meeting a question for decision must (as provided in section 194 of the Act) be decided on a show of hands of members present at the meeting.
- (7) A poll may be demanded on any question for decision.
- (8) Where before a vote is taken or before or immediately after the declaration of the result on a show of hands —
 - (a) the chairperson directs that the question is to be determined by a poll; or
 - (b) at least 5 members present in person or represented by proxy demand a poll,

the question for decision must be determined by a poll.

- (9) The poll must be taken when and in the manner that the chairperson directs.
- (10) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- (11) Once the votes on a show of hands or on a poll have been counted then, subject to subclause (8), a declaration by the chairperson that a

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resolution has been carried (unanimously or by a particular majority) or lost is evidence of that fact.

- (12) The result of the vote must be entered in the minute book.

42. Voting on a show of hands

On a show of hands at a general meeting, each member —

- (a) present; or
- (b) represented by a non-member acting under a power of attorney; or
- (c) represented by a non-member appointed under section 61(1) of the Act; or
- (d) represented by a non-member appointed as a proxy under these rules*;

may exercise only one vote.

*Note for this clause:

If the rules do not allow for non-members to be appointed as proxies, paragraph (d) should be omitted.

43. Voting on a poll

On a poll called at a general meeting, each member —

- (a) present; or
- (b) represented by a proxy; or
- (c) represented by a person acting under a power of attorney; or
- (d) represented by a person appointed under section 61(1) of the Act,

has one vote.

44. Determining the outcome where equality of votes

- (1) Where the votes in favour and against a resolution are equal, the chairperson of the meeting provided he or she is a member of the co-operative may exercise a second or casting vote.

- (2) Where the chairperson is not a member of the co-operative or decides not to exercise a casting vote, the outcome of an equality of votes is taken to have been decided in the negative.

45. Proxy votes

- (1) The instrument appointing a proxy must be in writing signed by the appointer or the appointer’s attorney properly authorised in writing.
- (2) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.

**Optional, select either (3) or (4).*

- (3) A person may act as a proxy despite that person not being a member of the co-operative. *
- (4) A person must not act as a proxy unless the person is a member of the co-operative. *
- (5) A person may be appointed as a proxy by more than one member. **

**Note for this subclause:

The rules may impose a limit on the number of members for whom a proxy may act.

- (6) An instrument appointing a proxy may be in the following form, or another form the board approves*** —

..... (name of co-operative)

I/we (name) of (address)

being a member(s) of the co-operative appoint

..... (name) of (address)

as my/our proxy or, in that person’s absence, the chairperson of the meeting or a person nominated by the chairperson as my/our proxy, to vote for me/us and on my/our behalf at the *annual general/*special general meeting of the co-operative, to be held on the

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day of 20..... and at any adjournment of the meeting.

#This form is to be used *in favour/*against the resolution.

Signed this day of 20.....

**Strike out if not applicable.*

#To be inserted if desired.

***Note for this subclause:

The form may also set out the resolutions with provision for the member to give direction to the proxy.

- (7) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the co-operative or at another place specified for the purpose in the notice calling the meeting.
- (8) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the co-operative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

46. Postal ballots

- (1) A postal ballot or special postal ballot must be held when required by the Act, these rules or when the members by ordinary resolution approve one.*

*Notes for this subclause:

- 1. Section 187 of the Act lists a number of matters for which a special postal ballot must be conducted.

2. Section 188(1) of the Act requires the board to conduct a postal ballot or a special postal ballot for the passing of a special resolution on the written requisition of such number of members who together are able to cast at least 20% (or less if the rules provide) of the total number of votes able to be cast at a meeting of the co-operative.
 3. Members proposing to give the board a written requisition should familiarise themselves with the requirements in section 188(2).
- (2) Subject to sections 185 and 186 of the Act, regulation 9A of the regulations and this clause, a postal ballot or special postal ballot is to be conducted using such method, in such form and returnable in such manner, as the board decides.
 - (3) A postal ballot or special postal ballot may incorporate one or more methods of electronic voting.
 - (4) The board is to appoint a returning officer to conduct the postal ballot or special postal ballot or, in default of such appointment, the secretary is the returning officer.
 - (5) At least 21 days prior to the closing date of a postal ballot or special postal ballot*, the returning officer is to send ballot papers (in the form and with such content as the board may approve) to all voting members giving —
 - (a) particulars of the business in relation to which the postal ballot or special postal ballot is being conducted; and
 - (b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - (c) notice of the closing date and closing time of the postal ballot.

*Note for this subclause:

Section 186(3) of the Act requires a disclosure statement containing specified information to be included with the other material sent to members in connection with a special postal ballot.

- (6) The returning officer shall receive, validate and count the votes and advise the Board of —
 - (a) the number of formal votes cast in favour of the proposal concerned; and
 - (b) the number of formal votes cast against the proposal concerned; and

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- (c) the number of informal votes cast.
- (7) On declaration of the result of the ballot, the secretary must enter the subclause (6) details in the minute book of the co-operative.
- (8) If the board decides to conduct a secret postal ballot it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.

[Clause 46 amended: Gazette 2 Dec 2016 p. 5437.]

47. Special and ordinary resolutions

- (1) A special resolution is a resolution of which the notice set out in subclause (2) has been given of the intention to propose the resolution as a special resolution and that is passed —
 - (a) by two-thirds of the members who vote in person or by proxy or attorney, at a general meeting; or
 - (b) by a two-thirds majority in a postal ballot; or
 - (c) by three-quarters of the members who cast formal votes in a special postal ballot of members. [s. 177(1)]
- (2) A resolution is not taken to have been passed as a special resolution unless not less than 21 days notice has been given to the members of the co-operative stating —
 - (a) the intention to propose the special resolution; and
 - (b) the reasons for proposing the special resolution; and
 - (c) the effect of the special resolution being passed. [s. 177(3)]
- (3) A special resolution has effect from the date it is passed, however a special resolution required to be passed by special postal ballot has no effect until registered by the Registrar [s. 180] and no amendment to these rules is to take effect until the amendment is registered by the Registrar. [s. 106(1)]
- (4) An ordinary resolution is one passed by a simple majority and has effect from the date it is passed.

48. Board of directors

- (1) The business and operations of the co-operative are to be managed and controlled by the board of directors, and for that purpose the board has and may exercise the powers of the co-operative as if expressly conferred on the board by a general meeting of the co-operative.
- (2) The board must have (at least 3) member directors each of whom must be an individual, whether as a member of the co-operative, or as a representative of a corporation member, and at least 18 years old.*

*Note for this subclause:

The acts of a director are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

- (3) The powers of the board are subject to any restrictions imposed by the Act or by these rules.

[Clause 48 amended: Gazette 2 Dec 2016 p. 5437.]

49. Qualifications of directors

A person is not qualified to be a director of the co-operative unless the person is —

- (a) a member of the co-operative or a representative of a corporation that is a member of the co-operative; or
- (b) an employee of the co-operative or a person qualified under clause 50 to be an independent director.

50. Independent directors

- (1) The board may appoint persons with special skills to be independent directors of the co-operative on the conditions and for the period the board decides.
- (2) The special skills required of an independent director may be specified by the board, and may be varied by the board from time to time, or from appointment to appointment. [s. 199(2)(b)]
- (3) An independent director is, subject to this clause, a director of the co-operative for the period of the appointment.

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- (4) The majority of directors must be member directors. [s. 199(3)]
- (5) Unless this clause provides otherwise, all other rules relating to directors apply to an independent director.
- (6) On the termination of appointment as independent director by death, retirement, resignation or another way, the independent director stops being a director of the co-operative.
- (7) An independent director is entitled to attend any general meeting of the co-operative and be heard on any part of the business of the meeting.
- (8) An independent director is not entitled to vote at a meeting of directors on a motion about the terms and conditions of his or her appointment, conditions of service or termination of service but may be permitted by the chairperson of the board to speak in relation to the motion.
- (9) Despite anything else in these rules a vote is not valid if taken at a meeting of the board of directors unless, when the vote is taken, the number of independent directors present is less than the number of member directors present.
- (10) Despite the term of appointment fixed under subclause (1), the appointment of an independent director must be ratified by the members of the co-operative at the general meeting next after the appointment of the independent director. Ratification must be by a simple majority of members of the co-operative present and entitled to vote at the meeting.
- (11) If the appointment of an independent director is not ratified by the members of the co-operative, anything done by the independent director since the appointment and up to that time is taken to have been validly done.
- (12) Despite the terms of appointment, the members may, by special resolution at a general meeting of members, terminate the appointment of an independent director.
- (13) An independent director cannot be required to be an active member of the co-operative.

51. Managing director

- (1) The board may, if it considers appropriate, appoint a person to be managing director of the co-operative and may from time to time remove the person from office. The conditions and the period of appointment must be decided by the board.
- (2) The managing director is not counted for clause 48(2).
- (3) In all other respects the managing director has all the privileges of a director and all other rules relating to directors apply to the managing director.
- (4) On the termination of the appointment as managing director either by death, retirement, resignation or termination by the board, the managing director stops being a director of the co-operative.
- (5) The managing director is not entitled to be present or to vote at a meeting of directors on a motion concerning the conditions of his or her own appointment, conditions of service or termination of service.
- (6) A managing director cannot be required to be an active member of the co-operative.
- (7) A managing director is classified as an independent director under the Act.

52. First and subsequent directors

- (1) The first member directors must be elected by poll at the formation meeting of the co-operative.*

*Note for this subclause:

Under section 198(2)(b) of the Act, the first directors of a transferred co-operative are the directors in office at the date of registration under the Act.

- (2) The term of office of the first member directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.
- (3) The term of office of member directors elected thereafter, is to commence from the annual general meeting at which they are elected or at which their election is confirmed and ends on the day of the third annual general meeting thereafter.

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*Note for this clause:

Each co-operative is to insert its own rules here in relation to the conduct of elections when electing directors, so that the rules reflect the particular circumstances of that co-operative.

53. Removal from office of member director

The co-operative may by ordinary resolution remove a member director before the end of the member director's period of office, and may by a simple majority appoint another person in place of the member director. The person appointed must retire when the removed member director would otherwise have retired. [s. 206A]

[Clause 53 amended: Gazette 2 Dec 2016 p. 5437-8.]

54. Vacation of office of director

A director vacates office if —

- (a) the director dies or is permanently incapacitated; or
- (b) the director is disqualified or otherwise unable to be a director under Part 9 Division 2A of the Act; or
- (c) the director absents himself or herself from 3 consecutive ordinary meetings of the board without its leave; or
- (d) the director resigns from the office of director by written notice given by the director to the co-operative; or
- (e) the director is removed from office by ordinary resolution of the co-operative; or
- (f) the person ceases to hold a qualification that qualified the person to be a director; or
- (g) an administrator of the co-operative's affairs is appointed under Part 12 Division 4 of the Act.

[Clause 54 amended: Gazette 2 Dec 2016 p. 5438.]

55. Filling of casual vacancies

- (1) The board may appoint a qualified person to fill a casual vacancy in the office of director until the next annual general meeting.*
- (2) For the purposes of this clause, a casual vacancy arises if the office of director is vacated under clause 54. [s. 198(3)]

*Note for this clause:

The rules may provide that, in the absence of a director from a meeting of the board, an alternate director may be appointed under section 203 of the Act.

56. Remuneration

- (1) Under section 215 of the Act the directors must not receive remuneration for their services as directors other than fees, concessions and other benefits approved at a general meeting of the co-operative.
- (2) All necessary expenses incurred by the board members in the business of the co-operative must be refunded to them.

57. Proceedings of the board

- (1) Meetings of the board (including meetings conducted under clause 58) are to be held as often as may be necessary for properly conducting the business and operations of the co-operative and must be held at least quarterly.
- (2) A meeting may be held with one or more of the directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.
- (3) Questions arising at a meeting must be decided by a majority of votes.
- (4) If votes are equal, the chairperson, if a member director, has a second or casting vote.
- (5) A meeting of the board of directors may be called by a director giving notice individually to every other director. [s. 201(3)]
- (6) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board, without which the meeting cannot be held.

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58. Transaction of business outside board meetings

- (1) The board may under section 202 of the Act transact any of its business —
 - (a) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of the members is taken to be a decision of the board; or
 - (b) at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting, can be heard by the other members.
- (2) For the purposes of this clause the chairperson of the board and each member of the board have the voting rights they have at an ordinary meeting of the board.
- (3) A resolution approved under subclause (1)(a) is to be recorded in the minutes of the meetings of the board.
- (4) The secretary may circulate papers among members of the board for subclause (1)(a) by email, fax or other transmission of the information in the papers concerned.

59. Quorum for board meetings

- (1) The quorum for a meeting of the board is half the number of directors (or if half is not a whole number the whole number next higher than one-half).
- (2) The number of independent directors must be fewer than the number of member directors present at a meeting of the board.

60. Chairperson of board

- (1) The chairperson of the board is to be elected by the board.*

*Note for this subclause:

The rules of a co-operative may provide that, in the alternative, the chairperson may be elected at a general meeting of the co-operative.

- (2) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of the meeting, the directors present may choose

one of their number to be chairperson of the meeting until the chairperson attends and is willing to act as chairperson.

- (3) The chairperson may be removed, and a new chairperson elected by ordinary resolution of the board.*

*Note for this subclause:

If the rules of the co-operative provide that the chairperson is elected at a general meeting of the co-operative, then subclause (3) is to be read so that the removal of a chairperson and the election of a new chairperson is to be done by ordinary resolution at a general meeting.

61. Delegation and board committees

- (1) The board may (under section 204 of the Act) by resolution delegate to —
- (a) a director; or
 - (b) a committee of 2 or more directors; or
 - (c) a committee of members of the co-operative; or
 - (d) a committee of members of the co-operative and other persons if members form the majority of persons on the committee; or
 - (e) a committee of directors and other persons,

the exercise of the board's powers (other than this power of delegation) specified in the resolution. The co-operative or the board may by resolution revoke all or part of the delegation.

- (2) A power delegated under this clause may, while the delegation remains unrevoked, be exercised from time to time in accordance with the delegation.
- (3) A delegation under this clause may be given on conditions limiting the exercise of the power delegated, or time or circumstances.
- (4) Despite any delegation under this clause, the board may continue to exercise the power delegated.
- (5) If a power is exercised by a director (alone or with another director) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in his or her own name on behalf of the board, the power is taken to have been exercised by the board.

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This is so whether or not a resolution delegating the exercise of the power to the director was in force when the power was exercised, and whether or not any conditions mentioned in subclause (3) were observed by the director exercising the powers.

- (6) A committee may elect a chairperson of their meetings. If no chairperson is elected, or, if at a meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- (7) A committee may meet and adjourn as it thinks appropriate. Questions arising at a meeting must be decided by a majority of votes of the members present and voting and if the votes are equal, the chairperson has a second or casting vote.

[Clause 61 amended: Gazette 2 Dec 2016 p. 5438.]

62. Other committees

- (1) The board may by resolution appoint committees of members or other persons or both, to act in an advisory role to the board and to committees of directors.
- (2) Clause 61(6) and (7) apply to committees appointed under this clause, with the changes approved of by the board.
- (3) The quorum for a meeting of the committee is half the number of committee members (or if half is not a whole number the whole number next higher than one-half).

63. Minutes

- (1) The board must keep minutes of meetings and, in particular, of —
 - (a) all appointments of officers and employees made by the directors; and
 - (b) the names of the directors present at each meeting of the board and of a committee of the board; and
 - (c) all resolutions and proceedings at all meetings of the co-operative and of directors and of committees of directors.

Note for this subclause:

Section 221 of the Act also requires any declarations of interest by directors to be recorded in the minutes.

- (2) Minutes must be entered in the appropriate records within one month after the meeting to which they relate is held.
- (3) The minutes are to be confirmed at, and signed by the chair of, the next meeting.

64. Financial year

The financial year of the co-operative ends on

65. Seal

- (1) This clause applies if a co-operative chooses to authenticate a document under the common seal of the co-operative.
- (2) The co-operative must, as required by section 240 of the Act, have the name of the co-operative appear in legible characters on its common seal and on any official seal. The common seal must be kept at the registered office in the custody that the board directs.
- (3) The co-operative may, under section 47 of the Act, have for use in place of its common seal outside the State, one or more official seals. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (4) The seal of the co-operative must not be affixed to an instrument other than under a resolution of the board. Two directors, or one director and the secretary must be present and must sign all instruments sealed while they are present.

66. Custody and inspection of records and registers

- (1) The co-operative must have at its registered office and available during normal office hours for inspection by any member free of charge [s. 232(1)] the following —
 - (a) a copy of the Act and the regulations;
 - (b) a copy of the rules of the co-operative and any attachments under section 345 of the Act;

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- (c) a copy of the most recent annual return of the co-operative under section 244ZB of the Act;
- (ca) a copy of the most recent financial information reported to members under Part 10A of the Act;
- (d) the register of directors and members;
- (e) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;
- (f) the register of memberships cancelled under Part 6 of the Act, required to be kept under section 230(1)(g) of the Act;
- (g) the register of notifiable interests required to be kept under section 284 of the Act;
- (h) a copy of the minutes of each general meeting;
- (i) the other registers required under the Act or the regulations to be open for inspection.

Note for this subclause:

Section 233 of the Act sets out the limitations that apply to the use of information on these registers and provides for recovery of loss, damages or profits arising from misuse.

- (2) A member may make a copy of the entries in a register mentioned in subclause (1) during normal office hours, [free of charge/for the fee of \$ (see Schedule 10 of the regulations for the fee that may be charged)].

[Clause 66 amended: Gazette 2 Dec 2016 p. 5438-9.]

67. Accounts

- (1) The board must have a financial institution account or accounts, electronic or otherwise, in the name of the co-operative, into which all amounts received must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for the co-operative, must be signed by 2 directors or by any 2 persons authorised by the board or authorised by the chief executive officer.

68. Safe keeping of securities

Shares, debentures, charges and any other certificates or documents or duplicates of them pertaining to securities must be safely kept by the co-operative in the way and with the provision for their security as the board directs.

69. Appointing an auditor — co-operatives

- (1) The board of a co-operative (unless the co-operative is a small co-operative) must appoint an auditor within one month of being registered under the Act, unless an auditor has already been appointed at a general meeting of the co-operative.
- (2) An auditor appointed under subclause (1) holds office until the first annual general meeting of the co-operative.
- (3) At its first annual general meeting, the co-operative must appoint an auditor of the co-operative and at each subsequent annual general meeting must appoint an auditor to fill any permanent vacancy in the office of the auditor.

[Clause 69 amended: Gazette 2 Dec 2016 p. 5439.]

70. Appointing an auditor — small co-operatives

- (1) The co-operative, if a small co-operative, may appoint an auditor at its first annual general meeting and at subsequent annual general meetings to fill a permanent vacancy in the office of the auditor.
- (2) Subclauses (3) and (4) only apply where no appointment is made under subclause (1).
- (3) The board of a small co-operative must appoint an auditor within one month of being directed to prepare a financial report and have it audited under either section 244I or 244J of the Act.
- (4) An auditor appointed under subclause (3) holds office until the financial report prepared as a result of the direction has been audited and sent to members.

[Clause 70 amended: Gazette 2 Dec 2016 p. 5439.]

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71. Terms of appointment, remuneration and removal of auditors

- (1) The appointment, remuneration and removal of an auditor must comply with Part 10A Division 12 of the Act.
- (2) An auditor appointed at an annual general meeting holds office until the auditor —
 - (a) dies; or
 - (b) is removed, or resigns, from office in accordance with section 244ZW of the Act; or
 - (c) ceases to be a registered company auditor within the meaning of the Corporations Act; or
 - (d) ceases to be an auditor under section 327B(2A), (2B) or (2C) of the Corporations Act.
- (3) While a casual vacancy in the office of the auditor continues, the surviving or continuing auditor or auditors, if any, may act.
- (4) Where there is no surviving or continuing auditor, the board must fill a casual vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office [s. 244ZW], within one month of the vacancy occurring, unless the co-operative at an annual general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as auditor under this subclause holds office until the next annual general meeting of the co-operative.
- (5) An individual, audit company or audit firm can be appointed as an auditor.
- (6) A co-operative cannot appoint a person —
 - (a) (including a person who is a substantial shareholder in a corporation) who is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount that is more than \$5 000; or
 - (b) who is —
 - (i) an officer of the co-operative; or
 - (ii) a partner, employer or employee of an officer of the co-operative; or

- (iii) a partner of an employee of an officer of the co-operative; or
 - (iv) an employee of an employee of an officer of the co-operative,
- to be auditor of the co-operative.
- (7) All reasonable fees and expenses of an auditor are payable by the co-operative.
 - (8) The board must enable an auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative and to be given such information as the auditor requires to perform his or her duties as auditor.
 - (9) An auditor may attend any general meeting of the co-operative and is entitled to be heard, at any general meeting the auditor attends on any part of the business of the meeting.
 - (10) An auditor is entitled to receive all notices and other communications relating to a general meeting that any member of the co-operative is entitled to receive.
 - (11) Subject to section 244ZW of the Act, an auditor may be removed from office by resolution at a general meeting.
 - (12) Subject to section 244ZW of the Act, an auditor may resign as auditor.

[Clause 71 amended: Gazette 2 Dec 2016 p. 5439-40.]

72. Co-operative funds

- (1) The board may resolve to retain all or part of the surplus arising in any year from the business of the co-operative, to be applied for the benefit of the co-operative. [s. 269]
- (2) Any part of the surplus arising in a year from the business of the co-operative or any part of the reserves may be —
 - (a) paid to a member by way of rebate in proportion to the value of business done by each member with the co-operative or to profits earned by the co-operative on business done by each member with the co-operative; or

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- (b) applied by the issue of bonus shares to a member in proportion to the value of business done by each member with the co-operative, to profits earned by the co-operative on business done by each member with the co-operative or to shares held by the member; or
 - (c) paid to a member by way of a dividend of not more than the prescribed amount for the shares held (a *limited dividend*).
- (3) The amount of a rebate or dividend payable to a member under subclause (2)(a) and (c) may, with the consent of the member, be applied —
 - (a) in payment for the issue to the member of bonus shares; or
 - (b) as a loan to the co-operative.
- (4) Any part of the surplus arising in any year from the business of the co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business, or to profits earned by the co-operative on business done by him or her with the co-operative, if —
 - (a) the person was a member at the time the business was done and the membership has lapsed; or
 - (b) the person has applied for membership after the business was done. [s. 272(1)]
- (5) Nothing in this clause precludes the payment of a bonus to an employee under the terms of the employee's employment. [s. 272(2)]
- (6) A part of the surplus, not more than%, arising in any year from the business of the co-operative may be applied for —
 - (a) charitable purposes; or
 - (b) supporting any activity approved by the co-operative. [s. 270(2)]
- (7) In this clause —

surplus means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and future contingencies.
- (8) A dividend, rebate or share bonus that accrues to the holder of shares, on which all calls payable have been paid, must be paid to the holder.

However, a dividend, share bonus or rebate that accrues to the holder of partially paid up shares must be applied to paying off any subscriptions or calls on shares that may (when the dividend or bonus becomes payable) be payable and unpaid by the holder.

- (9) If several persons are registered as joint holders of a share, any one of them may be given a valid receipt for any dividend or other money payable on or for the share.
- (10) Unless the Act or rules otherwise provide, interest does not accrue to a member on a dividend or share bonus held by a co-operative for a member.

73. Provision for loss

The board must make provision for loss that may result from transactions of the co-operative.

74. Notices

- (1) A notice or other document required under the Act, the regulations or these rules to be given to a member of the co-operative may be given —
 - (a) personally; or
 - (b) by leaving it with a person who appears to be 16 years of age or older at the member's address; or
 - (c) by post; or
 - (d) by faxing it or emailing it to a fax number or email address provided by the person; or
 - (e) by sending it to the member by other electronic means (if any) nominated by the member; or
 - (f) by publishing the notice in a newspaper circulating generally in this State or in the area served by the co-operative, but only if —
 - (i) the member's whereabouts are unknown to the co-operative; or
 - (ii) the Registrar permits notice to be given to members of the co-operative in that way.

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- (2) A document may be served on the co-operative —
 - (a) by post addressed to the registered office; or
 - (b) by leaving it at the registered office of the co-operative with a person who appears to be 16 years of age or older.
- (3) If a notice is sent by post, service is taken to be effected by properly addressing, prepaying and posting a letter containing the notice. For a notice of a meeting, service is taken to be effected at the end of 24 hours after the letter containing the notice is posted. Otherwise, service is taken to be effected when the letter would be delivered in the ordinary course of post and, in proving service, it is enough to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice or other document directed to a member and advertised in the newspaper is taken to be given to the member on the day the advertisement appears.
- (5) A notice given by fax or other electronic means is taken to have been served, unless the sender's fax or other electronic device indicates a malfunction in transmission, on the day the notice is sent, if sent on a business day, otherwise on the next business day.
- (6) A notice may be given by the co-operative to the joint holders of a share by giving the notice to the joint holder named first, in the register of members and shares, in relation to the share.
- (7) A notice may be given by the co-operative to the person entitled to a share because of the death, bankruptcy or incapacity of a member by sending it through the post in a prepaid letter addressed to the person by name. Alternatively it can be addressed to the person by the title of representative of the deceased, or incapacitated person, or trustee of the bankrupt, or by any similar description. The address should be the address given for the purpose by the person claiming to be entitled. Alternatively, if no address has been given, the notice can be given in the way it could have been given if the death, bankruptcy or incapacity had not happened.

- (8) Notice of every general meeting must be given, in the same way as authorised in this clause, to —
 - (a) every member of the co-operative other than members who have not supplied to the co-operative an address for giving notices to them; and
 - (b) every person entitled to a share because of the death, bankruptcy or incapacity of a member, who, but for the member’s death, bankruptcy or incapacity, would be entitled to receive notice of the meeting; and
 - (c) every independent director.
- (9) Except as provided in this clause and in clause 71(10) no other person is entitled to receive notices of general meetings.

[Clause 74 amended: Gazette 2 Dec 2016 p. 5440.]

75. Winding-up

- (1) The winding-up of the co-operative must be in accordance with Part 12 Division 3 of the Act.
- (2) If, on the winding-up or dissolution, there remains any property after the satisfaction of all its debts and liabilities (including the refund of the amounts paid up on the shares), this must be paid to, or distributed among, the members of the co-operative (in proportion to the amount of business conducted with the co-operative over the past years) (in proportion to the member’s shareholdings).

[Clause 75 amended: Gazette 2 Dec 2016 p. 5440.]

76. Schedule of charges

Copy book of rules	clause 2(6) and (7)
Copying entries in register	clause 66(2)
Transfer of shares	clause 19(7)

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Maximum fine clause 14(1)

Transfer/register of debenture clause 31(4)

Certification

We the undersigned, certify that this is a copy of the rules presented to the formation meeting on (date)

at for forming a co-operative to be known as —
.....
(name of co-operative)

..... Chairperson of formation meeting
(signature)

..... Secretary of formation meeting
(signature)

Note: This certification is signed at the formation meeting that is held after the rules have been approved by the Registrar and returned to the sponsors of the proposed co-operative.