

# Constitution

Qudos Mutual Limited (ACN 087 650 557) (“Company”)

A public company limited by shares

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# Constitution

## Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
<b>2</b>	<b>Membership</b>	<b>1</b>
2.1	Eligibility	1
2.2	Common bond for individuals	1
2.3	Common bond for bodies corporate	2
2.4	Admission to Membership	2
2.5	Issue of new Member Shares upon admission to Membership	3
<b>3</b>	<b>MCI</b> s	<b>3</b>
3.1	Share capital from MCIs	3
3.2	Issue	3
3.3	Rights of MCI Holders	3
3.4	Registration as holder of MCIs	4
3.5	Share Certificates	4
<b>4</b>	<b>Cessation of Membership</b>	<b>4</b>
4.1	When a person ceases to be a Member	4
4.2	Termination of Membership	5
4.3	Member's rights to appeal	5
4.4	Inactive or dormant accounts	5
<b>5</b>	<b>Share capital</b>	<b>5</b>
5.1	Directors to issue Shares	5
5.2	Rights conferred on holders of Member Shares	6
5.3	Ranking of Member Shares	6
5.4	Repayment of Member Share capital	6
5.5	Member Shares not transferrable	6
5.6	Non-recognition of interests	6
5.7	Joint holders of Shares	6
<b>6</b>	<b>Lien</b>	<b>7</b>
6.1	Lien on Member Share	7
6.2	Lien on distributions	7
6.3	Exemption from article 6.1	7
6.4	Company's rights to recover payments	7
6.5	Company's right of set off	7
6.6	Reimbursement is a debt due	8
<b>7</b>	<b>Calls on Member Shares</b>	<b>8</b>
7.1	Directors to make calls	8
7.2	Time of call	8
7.3	Members' liability	8
7.4	Joint holders' liability	8
7.5	Non-receipt of notice	8
7.6	Interest on default	8
7.7	Fixed instalments	8

7.8	Differentiation between holders as to calls	9
7.9	Prepayment of calls and interest	9
<b>8</b>	<b>Forfeiture of Member Shares</b>	<b>9</b>
8.1	Notice requiring payment of call	9
8.2	Contents of notice	9
8.3	Forfeiture for failure to comply with notice	9
8.4	Distributions included in forfeiture	9
8.5	Notice of forfeiture	10
8.6	Surrender instead of forfeiture	10
8.7	Cancellation of forfeiture	10
8.8	Effect of forfeiture on former holder's liability	10
8.9	Evidence of forfeiture	10
<b>9</b>	<b>Death, bankruptcy or winding-up of a Member or MCI Holder</b>	<b>10</b>
9.1	Death of an individual holder	10
9.2	Death of joint holder	10
9.3	Bankruptcy or winding-up of a Member or MCI Holder	11
<b>10</b>	<b>General meetings</b>	<b>11</b>
10.1	Annual general meeting	11
10.2	Convening a general meeting – Directors	11
10.3	Convening a general meeting – Members	11
10.4	Multiple venues	11
10.5	Notice of general meeting	12
10.6	Calculation of period of notice	12
10.7	Cancellation or postponement of a meeting	12
10.8	Notice of cancellation or postponement of a meeting	12
10.9	Contents of notice of postponement of meeting	12
10.10	Number of clear days for postponement of meeting	12
10.11	Business at postponed meeting	12
10.12	Proxy, attorney or Representative at postponed meeting	12
10.13	Non-receipt of notice	13
10.14	Proxy, attorney or Representative appointments	13
<b>11</b>	<b>Proceedings at general meetings</b>	<b>14</b>
11.1	Number for a quorum	14
11.2	Requirement for a quorum	14
11.3	If quorum not present	14
11.4	Adjourned meeting	15
11.5	Appointment of chairman of general meeting	15
11.6	Absence of chairman at general meeting	15
11.7	Conduct of general meetings	15
11.8	Adjournment of general meeting	16
11.9	Notice of adjourned meeting	16
11.10	Questions decided by majority	16
11.11	No casting vote for chairman	16
11.12	Voting on show of hands	16
11.13	Poll	16
11.14	Entitlement to vote	17
11.15	Joint shareholders' vote	17
11.16	Validity of vote in certain circumstances	17
11.17	Objection to voting qualification	18
11.18	Direct voting	18

<b>12</b>	<b>The Directors</b>	<b>19</b>
12.1	Number of Directors	19
12.2	Change of number of Directors	19
12.3	Retirement, appointment and election of Directors	19
12.4	Transitional arrangements	20
12.5	Office held until conclusion of meeting	20
12.6	Election of Elected Directors	20
12.7	Director elected at general meeting	20
12.8	Eligibility for election or appointment as Director	20
12.9	Appointment of Board Appointed Directors	21
12.10	Casual vacancy or additional Director	22
12.11	Remuneration of Directors	22
12.12	Superannuation contributions	22
12.13	Additional or special duties	23
12.14	Expenses	23
12.15	Director's interests	23
12.16	Vacation of office of Director	24
<b>13</b>	<b>Powers and duties of Directors</b>	<b>24</b>
13.1	Directors to manage Company	24
13.2	Specific powers of Directors	24
13.3	Appointment of attorney	25
13.4	Provisions in power of attorney	25
13.5	Signing of receipts and negotiable instruments	25
13.6	Committees	25
13.7	Powers delegated to Committees	25
13.8	Appointment of an Executive Director	25
13.9	Executive Director exempt from retirement by rotation	25
13.10	Remuneration of Executive Directors	25
13.11	Powers of Executive Director	26
13.12	Delegation of Directors' powers	26
<b>14</b>	<b>Proceedings of Directors</b>	<b>26</b>
14.1	Directors' meetings	26
14.2	Director may convene a meeting	26
14.3	Use of technology for Directors' meetings	26
14.4	Questions decided by majority	26
14.5	Chairman and deputy chairman of Directors	26
14.6	Absence of chairman at Directors' meeting	26
14.7	Chairman's casting vote at Directors' meetings	27
14.8	Quorum for Directors' meeting	27
14.9	Continuing Directors may act	27
14.10	Chairman of Committee	27
14.11	Meetings of Committee	27
14.12	Determination of questions	27
14.13	Circulating resolutions	27
14.14	Validity of acts of Directors	28
<b>15</b>	<b>Secretary</b>	<b>28</b>
15.1	Appointment of Secretary	28
15.2	Suspension and removal of Secretary	28
15.3	Powers, duties and authorities of Secretary	29

<b>16</b>	<b>Seals</b>	<b>29</b>
16.1	Safe custody of common seals	29
16.2	Use of common seal	29
<b>17</b>	<b>Inspection of records</b>	<b>29</b>
17.1	Inspection by Members and MCI Holders	29
17.2	Right of a Member, MCI Holder or other person to inspect	29
<b>18</b>	<b>Reserves</b>	<b>29</b>
18.1	Calculation and distribution of reserves	29
18.2	No dividends	30
<b>19</b>	<b>Service of documents</b>	<b>30</b>
19.1	Document includes notice	30
19.2	Form of document	30
19.3	Methods of service	30
19.4	Post	30
19.5	Fax or other electronic means	31
19.6	Notice board	31
19.7	Evidence of service	31
19.8	Joint holders	31
19.9	Persons entitled to Shares	31
<b>20</b>	<b>Winding up</b>	<b>31</b>
20.1	Liability on winding up	31
20.2	Demutualisation Resolution	31
20.3	Surplus	31
<b>21</b>	<b>Indemnity and insurance</b>	<b>32</b>
21.1	Indemnity	32
21.2	Insurance	32
21.3	Contract	32
<b>22</b>	<b>General</b>	<b>33</b>
22.1	Financial accommodation	33
22.2	Dispute resolution	33
22.3	Fines and forfeitures	33
	<b>Schedule 1 - Interpretation</b>	<b>34</b>
	<b>Schedule 2 – Election of Elected Directors</b>	<b>38</b>
	<b>Schedule 3 – Consideration of demutualisation resolutions</b>	<b>46</b>

# Constitution

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## 1 Definitions and interpretation

The meanings of the terms used in, and the principles to be applied in interpreting, this Constitution are set out in Schedule 1.

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## 2 Membership

### 2.1 Eligibility

- (a) A person, including a body corporate, is eligible for Membership only in accordance with this Constitution.
- (b) Unless expressly stated otherwise in this Constitution:
  - (i) an MCI Holder is not a Member of the Company merely by virtue of holding an MCI;
  - (ii) an MCI Holder may be (or become) a Member of the Company if they are otherwise admitted to Membership in accordance with Clause 2; and
  - (iii) 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, they have no more than one vote at a general meeting of the Company, regardless of the applicable terms of issue of the MCI.

### 2.2 Common bond for individuals

A person, other than a body corporate, is eligible for Membership if they fall within any of the following categories:

- (a) **(employment):**
  - (i) an employee of a company within the Qantas Group;
  - (ii) an employee of an associated company or industry (determined by the Directors from time to time);
  - (iii) an officer or employee of the Australian Public Service, its authorities or corporations;
  - (iv) an officer or employee of an Australian Government body, its authorities or corporations;
  - (v) an employee of a company which as the result of a sale or privatisation controls or acquires an authority or corporation referred to in subparagraphs (iii) or (iv) above;

- (vi) an employee of this Company; or
- (vii) a retired or former employee of an organisation of the type referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of this article;
- (b) **(family)** the spouse (whether legal or defacto), child, parent, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew or cousin (whether by blood, marriage or adoption) of a person admitted to membership under this Constitution;
- (c) **(approved persons)** a person approved by the Directors who has an affinity with the Company;
- (d) **(continuing membership)** a person who is a Member but has ceased to be eligible for membership in accordance with the categories for membership; or
- (e) **(Member nominees)** a person nominated for Membership by a Member.

### 2.3 Common bond for bodies corporate

A body corporate is eligible for Membership where the body corporate:

- (a) is to the satisfaction of the Directors or their delegate, wholly or substantially controlled by persons who would be eligible for admission to Membership under article 2.2;
- (b) acts as trustee of a trust in which a Member is a beneficiary;
- (c) has an affinity with the Company and is approved by the Directors; or
- (d) is Qantas Airways Limited (ACN 009 661 901).

A body corporate does not cease to be a Member because the body corporate does not retain, subsequently, eligibility for Membership under this Constitution.

### 2.4 Admission to Membership

The Directors may, in their absolute discretion, admit a person to Membership if the person:

- (a) applies for Membership in a manner to be determined by the Directors from time to time;
- (b) submits evidence satisfactory to the Directors as to that person's eligibility for Membership under this Constitution;
- (c) subscribes for five Member Shares at an issue price of \$2.00 per Member Share and which are paid up to the amount required by the Directors; and
- (d) pays any admission fee to be determined by the Directors.

The Directors are not required to provide reasons for admitting or not admitting a person as a Member.

## **2.5 Issue of new Member Shares upon admission to Membership**

If the Directors admit a person to Membership, then they must as soon as practicable:

- (a) issue and allot to the person new Member Shares;
- (b) enter the person's details in the Register; and
- (c) notify the person in writing that his or her application for Membership has been accepted.

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## **3 MCIs**

### **3.1 Share capital from MCIs**

- (a) Subject to compliance with the Corporations Act and satisfying the requirements of APRA in Prudential Standards (where applicable), the Company may raise capital by issuing MCIs or capital instruments convertible into MCIs.
- (b) The Company may create or issue MCIs at any time. The creation or issue of MCIs does not vary the rights attached to MCIs or any other Shares that the Company has already issued (or may issue in future).

### **3.2 Issue**

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

### **3.3 Rights of MCI Holders**

- (a) 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 Act and any applicable Prudential Standards. For the avoidance of doubt, but without limiting the foregoing, holders of MCIs may participate and vote at a general meeting or in a ballot to appoint directors by election only to the extent provided in the terms of issue of the relevant MCIs.
- (b) 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 Company in a winding-up of the Company after all senior claims, including the aggregate subscription price paid for any Member Shares by Members, have been satisfied and:
  - (i) the MCI Holder's claim ranks equally and proportionately with the claims of all other MCI Holders in the same class of MCIs; and
  - (ii) the amount of the MCI Holder's claim cannot exceed the subscription price of the MCI.
- (c) Notwithstanding anything to the contrary in this Constitution, but subject to the requirements for MCIs in the Corporations Act, 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.

- (d) The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by special resolution of the Company and:
  - (i) by a special resolution passed at a meeting of MCI Holders holding MCIs in the relevant class; or
  - (ii) 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 Company 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 Company.

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

### **3.4 Registration as holder of MCIs**

MCIs are transferable in accordance with the terms of issue applicable to the MCI. Except as otherwise provided by the rules of a licensed CS facility (as defined in the Corporations Act) which apply in relation to an MCI, a person becomes registered as the holder of that MCI upon entry by the Company in its Register of Members of the person's particulars in relation to the MCI as required by the Corporations Act.

### **3.5 Share Certificates**

If the Company is required by the Corporations Act to issue a share certificate to an MCI Holder in respect of one or more MCIs, the MCI Holder may require the Company to issue to the MCI Holder without charge one certificate for each class of MCIs in the Company that the MCI Holder holds, unless the terms of issue of the MCIs otherwise provide.

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## **4 Cessation of Membership**

### **4.1 When a person ceases to be a Member**

A person ceases to be a Member when:

- (a) that person's Membership is terminated under article 4.2 or cancelled under article 4.4;
- (b) that person redeems his or her Member Shares from the Company in accordance with article 5.4;
- (c) the Directors approve an application for cancellation of membership by a Member on being satisfied that all financial accommodation and other obligations have been discharged;

- (d) that person becomes bankrupt; or
- (e) that person dies or, being a body corporate, is wound up.

The Member Shares of a person who ceases to be a Member will be cancelled immediately on that person ceasing to be a Member.

#### **4.2 Termination of Membership**

The Directors may terminate a person's Membership on the grounds that the person:

- (a) has failed to discharge his or her obligations to the Company;
- (b) has engaged in conduct that the Directors reasonably consider to be detrimental to the Company, its employees or its customers; or
- (c) has obtained membership by fraud, misrepresentation or mistake, provided that the Company:
  - (d) gives the relevant Member 14 days' notice of termination; and
  - (e) if the person's Membership is terminated, pays the Member the amount paid up on that Member's Member Shares after satisfaction of all liabilities and obligations.

#### **4.3 Member's rights to appeal**

Subject to any policies and procedures established by the Directors from time to time, the Member is entitled to appeal a decision of the Directors to terminate his or her Membership pursuant to article 4.2 in accordance with the Company's dispute resolution procedures under article 22.2.

#### **4.4 Inactive or dormant accounts**

Subject to any laws relating to unclaimed money:

- (a) the Directors may cancel a person's Membership if all of the Member's deposit accounts with the Company have been classified as inactive or dormant, in accordance with the policies and procedures as determined by the Directors from time to time; and
- (b) the Company may deal with any amounts held in an inactive or dormant account as the Directors think fit, including by:
  - (i) transferring any amount from an inactive or dormant account to a suspense account; and
  - (ii) charging the Member a fee for keeping an account for the Member in the suspense account.

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## **5 Share capital**

### **5.1 Directors to issue Shares**

The issue of Shares in the Company is under the control of the Directors who may issue, allot and cancel or otherwise dispose of Shares in the Company,

subject to the Corporations Act, any requirements of APRA in Prudential Standards (where applicable) and this Constitution.

## **5.2 Rights conferred on holders of Member Shares**

The holders of Member Shares have the same rights and obligations, namely:

- (a) each Member Share is redeemable on the same terms that a withdrawable share was withdrawable under the *Financial Institutions Code* and the Company's rules prior to 1 July 1999;
- (b) the holders of Member Shares continue to have the same rights and obligations that they had or would have had by holding a withdrawable share; and
- (c) otherwise, the rights and obligations conferred and imposed under this Constitution and the Corporations Act.

## **5.3 Ranking of Member Shares**

Each Member Share ranks equally with all other Member Shares.

## **5.4 Repayment of Member Share capital**

The Company must repay the amount paid up in respect of a Member's Member Shares if:

- (a) the Member requests it; and
- (b) the Member has repaid all outstanding financial accommodation and discharged all other obligations to the Company.

## **5.5 Member Shares not transferrable**

- (a) A Member may not transfer, sell or assign Member Shares but may require such Member Shares to be repaid in accordance with article 5.4.

## **5.6 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a Share on any trust; or
- (b) any other interest in any Share or any other right in respect of a Share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

## **5.7 Joint holders of Shares**

*The provisions of this Constitution relating to joint holders of Member Shares apply so far as they are capable of application and with any necessary changes to joint holders of MCIs.*

- (a) Where 2 or more persons are registered as the joint holders of Shares then they are taken to hold the Shares as joint tenants with rights of survivorship. However, the Company is not bound:
  - (i) to register more than 3 persons as joint holders of a Share; or

- (ii) to issue more than one certificate or holding statement for Shares jointly held.
- (b) Any one of the joint holders of a Share may give effectual receipts for any return of capital payable to the joint holders.

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## **6 Lien**

### **6.1 Lien on Member Share**

To the extent permitted by law, the Company has a first and paramount lien on every Member Share for:

- (a) all due and unpaid calls and instalments in respect of that Member Share;
- (b) all money which the Company is required by law to pay, and has paid, in respect of that Member Share;
- (c) reasonable interest on the amount due from the date it becomes due until payment at a rate not exceeding the Prescribed Interest Rate; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **6.2 Lien on distributions**

A lien on a Member Share under article 6.1 extends to all distributions for that Member Share.

### **6.3 Exemption from article 6.1**

The Directors may at any time exempt a Member Share wholly or in part from the provisions of article 6.1.

### **6.4 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's Member Shares or any distributions on the Member's Member Shares, where the Company is either:

- (a) required by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **6.5 Company's right of set off**

The Company may set off amounts paid by the Company under article 6.4 against any amount payable by the Company to the Member.

## **6.6 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's Member Shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's Member Shares under lien, apply to the debt.

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## **7 Calls on Member Shares**

### **7.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the Member Shares of that Member, if the money is not by the terms of issue of those Member Shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **7.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **7.3 Members' liability**

On receiving not less than 30 business days' notice specifying the time or times and place of payment, each Member must pay to the Company by the time or times, and at the place, specified in the notice the amount called on that Member's Member Shares.

### **7.4 Joint holders' liability**

The joint holders of a Member Share are jointly and individually liable to pay all calls in respect of the Member Share.

### **7.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **7.6 Interest on default**

If a sum called in respect of a Member Share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day it is due to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

### **7.7 Fixed instalments**

If the terms of a Member Share make a sum payable on issue of the Member Share or at a fixed date, this is taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of

interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

## **7.8 Differentiation between holders as to calls**

The Directors may differentiate between the holders of the Member Shares as to the amount of calls to be paid and the times of payment.

## **7.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a Member Share even if no part of that amount has been called;
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at any rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum; and
- (c) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Member Share.

Other than the payment of interest under this article, the payment of an amount in advance of a call does not entitle the paying Member to any benefit or advantage or voting right to which the Member would not have been entitled if it had paid the amount when it became due.

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# **8 Forfeiture of Member Shares**

## **8.1 Notice requiring payment of call**

If a Member fails to pay a call, or instalment of a call, on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

## **8.2 Contents of notice**

The notice must name a further day, which is at least 14 days from the date of service 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 Member Shares in respect of which the call was made will be liable to be forfeited.

## **8.3 Forfeiture for failure to comply with notice**

If a notice under article 8.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant Member Shares, at any time before the payment required by the notice has been made.

## **8.4 Distributions included in forfeiture**

A forfeiture under article 8.3 includes all distributions to be made in respect of the forfeited Member Shares which have not been paid or distributed before the forfeiture.

## **8.5 Notice of forfeiture**

If any Member Share is forfeited under article 8.3, notice of the forfeiture must be given to the Member holding the Member Share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

## **8.6 Surrender instead of forfeiture**

The Directors may accept the surrender of any Member Share which they are entitled to forfeit on any terms they think fit and any Member Share so surrendered is taken to be a forfeited Member Share.

## **8.7 Cancellation of forfeiture**

Subject to the Corporations Act, the Directors may, at any time before a Member Share forfeited under article 8.3 is cancelled, withdraw the forfeiture of that Member Share on such terms as the Directors think fit.

## **8.8 Effect of forfeiture on former holder's liability**

A person whose Member Shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited Member Shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the Member Shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and all costs and expenses that may have been incurred by the Company by reason of that person's non-payment, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the Member Shares.

## **8.9 Evidence of forfeiture**

A written statement declaring that the person making the statement is a Director or a Secretary, and that a Member Share has been forfeited in accordance with this Constitution on the date declared in the statement, is evidence of the facts in the statement as against all persons claiming to be entitled to the Member Share.

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# **9 Death, bankruptcy or winding-up of a Member or MCI Holder**

## **9.1 Death of an individual holder**

If a Member or MCI Holder who does not hold Shares jointly dies, the estate of the deceased Member or MCI Holder retains any entitlements due from the Company.

## **9.2 Death of joint holder**

If a Member or MCI Holder who holds Shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's or MCI Holder's interest in the Shares and the survivor retains any entitlements due from the Company.

### **9.3 Bankruptcy or winding-up of a Member or MCI Holder**

The rights and liabilities of Members or MCI Holders made bankrupt or wound-up are as provided in the laws relating to bankruptcy and insolvency.

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## **10 General meetings**

### **10.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **10.2 Convening a general meeting – Directors**

At least four Directors may jointly convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **10.3 Convening a general meeting – Members**

- (a) A Member and/or Voting MCI Holder may request the Directors to convene a general meeting only in accordance with section 249D of the Corporations Act.
- (b) A Member and/or Voting MCI Holder may not convene or join in convening a general meeting except in accordance with sections 249E or 249F of the Corporations Act.

### **10.4 Multiple venues**

- (a) The Company may hold a general meeting at 2 or more venues using any technology that gives the Members and Voting MCI Holders as a whole a reasonable opportunity to participate.
- (b) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
  - (i) gives the general body of Members and Voting MCI Holders in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
  - (ii) enables the Members and Voting MCI Holders in the separate meeting place to vote on a poll,a Member or Voting MCI Holder present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.
- (c) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in article 10.4(b) is not satisfied, the chairman may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under article 10.4(b)) and transact business, and no Member or Voting MCI Holder may object to the meeting being held or continuing.



### **10.5 Notice of general meeting**

Notice of a general meeting must be given in accordance with article 19 and the Corporations Act.

### **10.6 Calculation of period of notice**

In computing the period of notice under article 10.5, both the day on which the last notice to Members and Voting MCI Holders is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **10.7 Cancellation or postponement of a meeting**

Where a general meeting (including an annual general meeting) is convened in accordance with article 10.2, the Directors may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 10.7 does not apply to a meeting convened in accordance article 10.3 or to a meeting convened by a court.

### **10.8 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member and Voting MCI Holder; and
- (b) to each other person entitled to be given notice of a general meeting.

### **10.9 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **10.10 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

### **10.11 Business at postponed meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

### **10.12 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member or Voting MCI Holder appointing the proxy, attorney or Representative gives to the Company at its Registered Office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **10.13 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

### **10.14 Proxy, attorney or Representative appointments**

- (a) An instrument appointing a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic), and received at any time, that the Directors prescribe or accept, or the chairman of a general meeting accepts.
- (b) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment received at the electronic address or by the electronic means specified in the notice is taken to have been received at the Registered Office of the Company and validated by the Member or Voting MCI Holder if there is compliance with the requirements set out in the notice.
- (c) If the Company receives an instrument or form appointing a proxy, attorney or Representative from a Member or Voting MCI Holder and the Directors consider that it is not properly executed or authenticated, or is incomplete or unclear:
  - (i) if the name, or the name of the office, of the proxy, attorney or Representative, is not filled in or is unclear, then the proxy, attorney or Representative of that Member or Voting MCI Holder is the person specified by the Company in the instrument or form of proxy or if no person is specified, the chairman of that meeting;
  - (ii) if the instrument or form has not been duly signed or authenticated, the Company may return the instrument or form to the appointing Member or Voting MCI Holder and request the Member or Voting MCI Holder sign or authenticate the instrument or form and return it to the Company within a period determined by the Directors (which may be later than the time specified in the notice of meeting for the receipt of proxy appointments); or
  - (iii) if the instrument or form is otherwise unclear or incomplete, the Company may:

- (A) by oral or written communication, clarify with the Member or Voting MCI Holder any instruction on the appointment; and
- (B) complete or amend the contents of any instrument or form to reflect the clarification in the instructions received from the Member or Voting MCI Holder (which may occur later than the time specified in the notice of meeting for the receipt of proxy appointments) and the Member or Voting MC Holder appoints the Company as its attorney for this purpose.

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## **11 Proceedings at general meetings**

### **11.1 Number for a quorum**

Subject to article 11.3, the quorum for a general meeting is, where:

- (a) the Company has only one Member, that Member;
- (b) the Company has less than 20 Members, 50% of the Members; and
- (c) otherwise, 10 Members,

who meet the Voting Qualification Criteria present in person or by proxy, attorney or Representative are a quorum at a general meeting. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (d) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (e) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

Subject to article 10.4(b), a member placing a direct vote under article 11.18 is not taken into account in determining whether or not there is a quorum at a general meeting.

### **11.2 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **11.3 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened at the request of Members and/or Voting MCI Holders, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the

Directors appoint by notice to the Members, Voting MCI Holders and others entitled to notice of the meeting.

#### **11.4 Adjourned meeting**

At a meeting adjourned under article 11.3(b), where:

- (a) the Company has only one Member, the quorum is that Member;
- (b) the Company has less than 20 Members, 50% of the Members; and
- (c) otherwise, 10 persons,

each being a Member (or the proxy, attorney or Representative of a Member) present at the meeting, are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **11.5 Appointment of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

#### **11.6 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) any deputy chairman;
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **11.7 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

## **11.8 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members and Voting MCI Holders present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members or Voting MCI Holders present in person or by proxy, attorney or Representative in respect of any adjournment.

## **11.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **11.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

## **11.11 No casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or Voting MCI Holder or as proxy or attorney or Representative of a Member or Voting MCI Holder.

## **11.12 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

## **11.13 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and

- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **11.14 Entitlement to vote<sup>1</sup>**

- (a) Subject to this Constitution and the Corporations Act, and to any rights or restrictions for the time being attached to any Shares:
  - (i) on a show of hands, each Member and Voting MCI Holder present in person and each other person present as a proxy, attorney or Representative of a Member or Voting MCI Holder has one vote; and
  - (ii) on a poll:
    - (A) each Member and Voting MCI Holder present in person has one vote;
    - (B) each person present as proxy, attorney or Representative of a Member or Voting MCI Holder has one vote as proxy, attorney or Representative for each Member or Voting MCI Holder that the person represents; and
    - (C) each Member and Voting MCI Holder who has duly lodged a valid direct vote in respect of the relevant resolution under article 11.18 has one vote.
- (b) a Member's entitlement to vote is suspended if the Member does not meet the Voting Qualification Criteria:
  - (i) in relation to an annual general meeting, on the day before nominations for elections of Directors close; and
  - (ii) in relation to a special general meeting, at least seven days before notice of the special general meeting is given.

#### **11.15 Joint shareholders' vote**

If Shares are held jointly and more than one Member or Voting MCI Holder votes in respect of those Shares, only the vote of the Member or Voting MCI Holder whose name appears first in the Register of Members counts.

#### **11.16 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member or Voting MCI Holder dies;
- (b) the Member or Voting MCI Holder is mentally incapacitated;
- (c) the Member or Voting MCI Holder revokes the appointment or authority; or

<sup>1</sup> Note: The above amendments to article 11.14 are set out on the assumption that the proposed amendments to Qudos Bank's Constitution under Resolution 1 have been passed by the Members of Qudos Bank at the annual general meeting held on 25 November 2020.

- (d) the Member or Voting MCI Holder revokes the authority under which the appointment was made by a third party.

### 11.17 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

### 11.18 Direct voting<sup>2</sup>

- (a) The Directors may determine that at any general meeting, a Member or Voting MCI Holder who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A “direct vote” includes a vote delivered to the Company by post, fax or other electronic means approved by Directors. The Directors may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.
- (b) A direct vote on a resolution at a meeting cast in accordance with article 11.18(a) by the Member or Voting MCI Holder is of no effect and will be disregarded:
  - (i) if, at the time of the resolution, the person who cast the direct vote:
    - (A) is not entitled to vote on the resolution; or
    - (B) would not be entitled to vote on the resolution if the person were present at the meeting at which the resolution is considered;
  - (ii) if, had the vote been cast in person at the meeting at which the resolution is considered:
    - (A) the vote would not be valid; or
    - (B) the Company would be obliged to disregard the vote;
  - (iii) subject to any rules prescribed by the Directors, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; and
  - (iv) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Directors under article 11.18(a).
- (c) Subject to any rules prescribed by the Directors, if the Company receives a valid direct vote on a resolution in accordance with articles 11.18(a) and 11.18(b) and, prior to, after or at the same time as receipt of the direct vote, the Company receives an instrument appointing a proxy,

<sup>2</sup> Note: The above amendments to article 11.18 are set out on the assumption that the proposed amendments to Qudos Bank’s Constitution under Resolution 1 have been passed by the Members of Qudos Bank at the annual general meeting held on 25 November 2020.

attorney or Representative to vote on behalf of the same Member or Voting MCI Holder on that resolution, the Company may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or Representative on the resolution at the meeting.

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## 12 The Directors

### 12.1 Number of Directors

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than 5 and not more than 12, of which:

- (a) a minimum of 4 are to be elected or appointed by Members and any Voting MCI Holders ("**Elected Director**"); and
- (b) a maximum of 3 are to be appointed by the Directors, excluding the Executive Director or any other Director appointed under article 13.8 ("**Board Appointed Director**").

### 12.2 Change of number of Directors

Subject to the Corporations Act, the Company in general meeting may approve by ordinary resolution a board limit proposed by the Directors to reduce the number of Directors.

### 12.3 Retirement, appointment and election of Directors

- (a) A Director must not hold office without re-election or re-appointment:
  - (i) past the third annual general meeting following the Director's appointment or last election; or
  - (ii) for more than three years,whichever is the longer.
- (b) Subject to article 12.4, there must be an election of Elected Directors (either by ballot or by resolution pursuant to article 12.7) at each annual general meeting of the Company. This can be satisfied by one or more of the following, so long as the number of Directors determined in accordance with article 12.1 is not exceeded:
  - (i) a person standing for election as a new Elected Director, having been nominated in accordance with the rules in Schedule 2;
  - (ii) any Elected Director who was appointed to fill a casual vacancy under article 12.10(b)(iii) standing for election as a Elected Director;
  - (iii) any Elected Director who is retiring at the end of the annual general meeting due to the tenure limitation in article 12.3(a) or article 12.10(b)(i), standing for re-election; or
  - (iv) if no person or Elected Director is standing for election or re-election in accordance with paragraphs (i), (ii) or (iii), any Elected Director who wishes to retire may stand for re-election. Otherwise, the Elected Director who has been a Director the longest without re-election must retire and stand for re-election.



If 2 or more Elected Directors have been a Director the longest and an equal time without re-election, the Elected Directors may agree among themselves or determine by lot which of them must retire.

- (c) This article does not apply to the Executive Director who is exempt from retirement and re-election in accordance with article 13.9.

Subject to this article 12.3, the Director will continue to hold office until he or she dies or until his or her office is vacated pursuant to article 12.16.

#### **12.4 Transitional arrangements**

Subject to this Constitution, the following transitional arrangements will apply in determining the retirement, election and appointment of Directors:

- (a) 3 Directors will retire at the 2019 annual general meeting and 2 Directors will stand for election as Member Elected Directors pursuant to article 12.3(b) and one Director will be appointed as a Board Appointed Director pursuant to article 12.9;
- (b) 3 Directors will retire at the 2020 annual general meeting and 2 Directors will stand for election as Elected Directors pursuant to article 12.3(b) and one Director will be appointed as a Board Appointed Director pursuant to article 12.9; and
- (c) 3 Directors will retire at the 2021 annual general meeting and 2 Directors will stand for election as Elected Directors pursuant to article 12.3(b) and one Director will be appointed as a Board Appointed Director pursuant to article 12.9.

#### **12.5 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting.

#### **12.6 Election of Elected Directors**

- (a) Subject to the Corporations Act and this Constitution, the rules in Schedule 2 apply to the election of Elected Directors.
- (b) An Elected Director's term commences at the end of the annual general meeting at which his or her election is announced and ends at the conclusion of the third annual general meeting occurring after his or her election.

#### **12.7 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **12.8 Eligibility for election or appointment as Director**

- (a) A person is not eligible to be a Director if the person:
  - (i) is an employee of the Company (except where article 13.8 applies) or has been an employee of the Company in the three year period prior to the annual general meeting;

- (ii) is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors, or made an assignment of his or her remuneration for their benefit;
  - (iii) is prohibited from being a director of a body corporate by the Corporations Act;
  - (iv) has been convicted in the last ten years of:
    - (A) an indictable offence in relation to the promotion, formation or management of a body corporate; or
    - (B) an offence involving fraud or dishonesty;
  - (v) does not satisfy the Company's fit and proper policy prepared in accordance with APRA's Prudential Standards and guidance notes or has been disqualified by APRA. The details of any determination made under this article 12.8(a)(v) must be kept confidential, except to the extent that disclosure is required by law;
  - (vi) is a Member whose voting rights have been suspended under article 11.14; or
  - (vii) has, unless article 12.8(c) applies, served as a Director for any consecutive period equal to or exceeding 12 years. For the avoidance of doubt, a Director who meets this tenure limitation will be entitled to remain in office until the end of his or her term.
- (b) In addition to the requirements under article 12.8(a), a person is not eligible to be:
- (i) an Elected Director if the person is not, and has not been for at least 12 months, a Member of the Company; or
  - (ii) a Board Appointed Director if the person is not a Member of the Company.
- (c) A Director:
- (i) who has served as an Elected Director for a consecutive period equal to or exceeding 12 years or in office as at 1 July 2018 and has served as a Director for a consecutive period equal to or exceeding 12 years is eligible to be appointed as a Board Appointed Director for one further term not exceeding three years; and
  - (ii) who has previously served as a Director for a consecutive period equal to or exceeding 12 years is eligible to be a Director if the person has not been a Director for a consecutive period of three years following their retirement or vacating of office.

## 12.9 Appointment of Board Appointed Directors

Subject to this Constitution and the Corporations Act, the Directors may, by resolution, appoint a person as a Board Appointed Director.

Subject to article 12.2, any appointment under this article must specify the Director's term of office, which must not exceed a term of three years.

## 12.10 Casual vacancy or additional Director

- (a) Subject to article 12.8(a) and disregarding the requirement in article 12.8(b), the Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed any maximum number specified in article 12.1.
- (b) Directors who are appointed under article 12.10(a) to fill a casual vacancy or as an addition to the existing Directors must retire in accordance with the following provisions:
  - (i) if the Director is appointed to fill a casual vacancy left by an Elected Director, then the Director appointed will hold office until the end of the term of office of the Elected Director whose office has become vacant, and is then eligible for election under this Constitution (save that for the purposes of this article, the person need only be a Member and is not required to fulfil the requirement of article 12.8(b));
  - (ii) if the Director is appointed to fill a casual vacancy left by a Board Appointed Director, or if the Director is appointed as an addition to the existing Directors and is classified as a Board Appointed Director, then article 12.9 applies; and
  - (iii) if the Director is appointed as an addition to the existing Directors and is classified as a Elected Director, then the Director will hold office until the next annual general meeting of the Company, and is then eligible for election under this Constitution (save that for the purposes of this article, the person need only be a Member and is not required to fulfil the requirement of article 12.8(b)).

This article does not apply to the Executive Director nominated by the Directors under article 13.8.

## 12.11 Remuneration of Directors

The Directors are to be remunerated for their services as Directors as follows:

- (a) the amount of the remuneration of the Directors is a yearly sum not exceeding the sum from time to time determined by the Company in general meeting. The notice convening the meeting must include any proposal to increase the Directors' remuneration and specify both the amount of any increase and the new yearly sum proposed for determination;
- (b) the amount of the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally; and
- (c) the Directors' remuneration accrues from day to day.

This article does not apply to the remuneration of the Executive Director.

## 12.12 Superannuation contributions

If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a Director.

### **12.13 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 12.11.

### **12.14 Expenses**

A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses when engaged on the business of the Company in accordance with the Company's policy from time to time.

### **12.15 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) subject to article 12.8(a), hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm, or an officer or employee of a body corporate which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, in accordance with the terms of their appointment, even in circumstances where a Director may be interested in the exercise (such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity).

A reference to the Company in this article 12.15 is also a reference to each related body corporate of the Company.

## **12.16 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be eligible under article 12.8;
- (b) is the Executive Director and ceases to be employed by the Company or a related body corporate;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) resigns from the office by notice in writing to the Company;
- (e) is not present personally or by proxy or Alternate Director at three consecutive ordinary meetings of the Directors without leave of absence from the Directors;
- (f) is three months in arrears in relation to money due to the Company and has failed to make arrangement for payment satisfactory to the Company;
- (g) is prohibited by the Corporations Act from holding office or continuing as a Director; or
- (h) is removed from office by resolution under section 203D of the Corporations Act, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment.

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## **13 Powers and duties of Directors**

### **13.1 Directors to manage Company**

The Directors are responsible for overseeing the proper management of the business of the Company. They may exercise all the powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **13.2 Specific powers of Directors**

Without limiting the generality of article 13.1 and subject to APRA's Prudential Standards and guidance notes, the Directors may exercise all the powers of the Company to:

- (a) borrow or raise money (including by issuing MCIs or capital instruments convertible into MCIs);
- (b) charge any property or business of the Company or all or any of its uncalled capital;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

### **13.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **13.4 Provisions in power of attorney**

A power of attorney granted under article 13.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **13.5 Signing of receipts and negotiable instruments**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **13.6 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

### **13.7 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 13.6 must exercise those powers in accordance with any directions of the Directors.

### **13.8 Appointment of an Executive Director**

- (a) Subject to article 13.8(c), the Directors may appoint an employee of the Company or one of its subsidiaries to the office of executive director of the Company, to hold office as Director for the period determined at the time of appointment, but not to exceed the term of employment of the employee.
- (b) The Directors may, subject to the terms of any employment contract between the Executive Director and the Company, at any time remove or dismiss any Executive Director from employment with the Company, in which event the appointment as a Director will automatically cease.
- (c) An Executive Director may only be appointed if, after the appointment, Elected Directors constitute a majority of the Directors.

### **13.9 Executive Director exempt from retirement by rotation**

The Executive Director, nominated by the Directors, is, while holding that office, exempt from retirement by rotation under article 12.2.

### **13.10 Remuneration of Executive Directors**

The remuneration of an Executive Director may be fixed by the Directors, but may not be by a commission on or percentage of operating revenue.

### **13.11 Powers of Executive Director**

The Directors may:

- (a) confer on an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on an Executive Director.

### **13.12 Delegation of Directors' powers**

Subject to this Constitution, the Directors may delegate any of their powers, including their power to admit a person to Membership or to terminate or cancel a person's Membership, to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **14 Proceedings of Directors**

### **14.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **14.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting by notice to all Directors.

It is not necessary to give notice to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.

### **14.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

### **14.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **14.5 Chairman and deputy chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and one of their number as deputy chairman. They may also determine the periods for which the chairman and deputy chairman are to hold office.

### **14.6 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 14.5; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the deputy chairman will be the chairman of the meeting. If a deputy chairman has not been elected, or is not present or willing to act, the Directors present must elect one of their number to be chairman of the meeting.

#### **14.7 Chairman's casting vote at Directors' meetings**

If there are an equal number of votes for and against a question, the chairman of the Directors' meeting does not have a casting vote in addition to his or her deliberative vote.

#### **14.8 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is five Directors, of which a majority must be Elected Directors.

#### **14.9 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 12.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **14.10 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **14.11 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **14.12 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If there are an equal number of votes for and against a question, the chairman of the meeting has a casting vote, unless only 2 members of the Committee are present and entitled to vote on the question.

#### **14.13 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors (excluding any Director granted a leave of absence or who is outside of Australia on leave) entitled to vote on the



resolution have consented to the resolution in accordance with this article 14.13 . The resolution is passed when the last participating Director consents to the resolution in accordance with this article 14.13. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.

- (b) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.
- (c) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by fax or other electronic means) addressed to and received by the Secretary or the Chairman:
  - (i) that signifies the Director's assent to the resolution;
  - (ii) that sets out the terms of the resolution or identifies those terms; and
  - (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (d) Any document referred to in this article may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.
- (e) This article 14.13 applies to resolutions of Committees as if the references to Directors were references to Committee members.

#### **14.14 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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## **15 Secretary**

### **15.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **15.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **15.3 Powers, duties and authorities of Secretary**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.
- (b) The Secretary is entitled to attend and be heard at all Directors' and general meetings.

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## **16 Seals**

### **16.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **16.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **17 Inspection of records**

### **17.1 Inspection by Members and MCI Holders**

Subject to the Corporations Act, the Directors may determine whether, to what extent, at what time and places, and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members and MCI Holders (other than Directors).

### **17.2 Right of a Member, MCI Holder or other person to inspect**

A Member, an MCI Holder or other person (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **18 Reserves**

### **18.1 Calculation and distribution of reserves**

The Company's profit or loss in any one financial year arising from its operations must be determined and dealt with in accordance with APRA's Prudential Standards and guidance notes. The Directors must also resolve in each financial year the amount of profit which must be carried to a reserve. Reserves can be used in the business of the Company or can be distributed on a winding up in accordance with this Constitution.

## **18.2 No dividends**

No dividend is payable in respect of any Member Shares.

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## **19 Service of documents**

### **19.1 Document includes notice**

In this article 19, a reference to a document includes a notice and a notification by electronic means.

### **19.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **19.3 Methods of service**

- (a) The Company may give a document to a Member:
- (i) personally;
  - (ii) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
  - (iii) by sending it to a fax number or electronic address nominated by the Member;
  - (iv) by notifying the Member by an electronic means nominated by the Member that:
    - (A) the document is available; and
    - (B) how the Member may use the nominated access means to access the document;
  - (v) if the Member has no registered address, by posting it on a notice board at the Company's Registered Office; or
  - (vi) by using any other method permitted under the Corporations Act;
- (b) The Company may give a document to an MCI holder in any manner permitted by the Corporations Act and any relevant terms of issue of the MCIs.

### **19.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the day of its posting.

## **19.5 Fax or other electronic means**

A document sent or given by fax or other electronic means:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

## **19.6 Notice board**

A document posted on a notice board is taken to be served 24 hours after it is posted on the board.

## **19.7 Evidence of service**

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member or MCI Holder personally, by post, fax, electronic or other means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

## **19.8 Joint holders**

A document may be given by the Company to the joint holders of a Share by giving it to the joint holder first named in the Register of Members for the Share.

## **19.9 Persons entitled to Shares**

A person who by operation of law or other means whatsoever becomes entitled to any Share is absolutely bound by every document given in accordance with this article 19 to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

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# **20 Winding up**

## **20.1 Liability on winding up**

Subject to this article and article 3.3(b), on the winding up of the Company:

- (a) a Member's liability is limited to the amount unpaid in relation to the Member's contractual obligations with the Company; and
- (b) the liability of a holder of Member Shares extends to the amount unpaid in relation to those Member Shares.

## **20.2 Demutualisation Resolution**

Schedule 3 applies to any Demutualisation Resolution to be submitted to Members (as defined in Schedule 3).

## **20.3 Surplus**

On a winding up, subject to any preferred or other rights attaching to Member Shares and subject to article 3.3(b), Members are entitled to participate in any surplus equally and without regard to the number of Member Shares held by any Member. In the case of a voluntary winding-up, the Members at the time they resolve to wind up the Company may resolve that any surplus be transferred to

any Company which has a mutual structure in accordance with any current policy of the Australian Securities and Investments Commission or APRA.

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## **21 Indemnity and insurance**

### **21.1 Indemnity**

To the maximum extent permitted by law and to the extent that the relevant person is not indemnified by directors' and officers' liability insurance maintained by the Company, the Company will indemnify any current or former Director or Secretary or officer of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

### **21.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

### **21.3 Contract**

The Company may enter into an agreement with a person referred to in articles 21.1 and 21.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **22 General**

### **22.1 Financial accommodation**

The Company's primary purpose is to provide financial accommodation to its Members. This article however does not limit the powers of the Company to invest funds, subject to any applicable laws and APRA's Prudential Standards and guidance notes, otherwise than by way of financial accommodation to its Members. Nothing in this article prohibits or prevents the Company from:

- (a) accepting a deposit of money from a non-Member in accordance with any applicable laws and Prudential Standards; or
- (b) providing financial accommodation to any person or class of persons as determined by the Directors from time to time in their absolute discretion.

### **22.2 Dispute resolution**

- (a) The Directors must appoint a person to settle disputes between the Company and a Member or MCI Holder (in their capacity as a Member or MCI Holder), and establish procedures for the settlement of such disputes.
- (b) Nothing in this article shall apply to any dispute as to the construction or effect of any law or of any mortgage or of any contract contained in any document other than this Constitution.
- (c) For the purposes of this article:
  - (i) 'Company' includes the Directors and an officer:
  - (ii) 'Member' includes:
    - (A) any person aggrieved who has not for more than three months ceased to be a Member; and
    - (B) any person claiming by or through a Member or by or through a person referred to in subparagraph (A),
  - (iii) 'MCI Holder' includes any person aggrieved who has not for more than three months ceased to be an MCI Holder.

### **22.3 Fines and forfeitures**

Unless expressly provided by this Constitution, no Member or MCI Holder is liable to any fine or forfeiture other than as may be imposed by law.

# Constitution

## Schedule 1 - Interpretation

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### 1 Interpretation

#### 1.1 Definitions

In this Constitution, unless the contrary intention appears:

**APRA** means the Australian Prudential Regulatory Authority.

**Australian Government** means the Government of the Commonwealth of Australia or any State or local government.

**Australian Public Service** has the meaning given to that term under the *Public Services Act 1999* (Cth).

**Board** means the board of directors of the Company.

**Board Appointed Director** has the meaning given to the term in article 12.1.

**Committee** means a committee of Directors constituted under article 13.6.

**Company** means Qudos Mutual Limited (ACN 087 650 557), as that name may be changed from time to time.

**Constitution** means this constitution, and a reference to an article is a reference to an article of this constitution.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means a person holding office as a director of the Company, and where appropriate includes an **Alternate Director**.

**Directors** means all or some of the Directors acting as a board.

**Elected Director** means has the meaning given to the term in article 12.1.

**Executive Director** means a person appointed as an executive director under article 13.8.

**MCI** means “mutual capital instrument” being a share as described in article 3.

**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 Members as a member of the Company (within the meaning of the Corporations Act).

**Member** means a person entered in the Register of Members as a holder of Member Shares in the capital of the Company and **Membership** has a corresponding meaning.

**Member Shares** means redeemable preference shares in the Company categorised as:

- (a) Statutory Redeemable Preference Shares;
- (b) Transitional Redeemable Preference Shares; and
- (c) New Redeemable Preference Shares,

which comprise a single class of shares and confer on the holder of those shares the rights as set out in this Constitution.

**New Redeemable Preference Shares** means redeemable preference shares in the Company issued after 31 July 2001 or in accordance with this Constitution.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution and in the absence of a determination means the rate 4% above the most recent 90 day Bank Bill Swap Reference Rate last published in the Australian Financial Review (or if that rate has not been published, another rate set by the Directors in good faith).

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

**Qantas Group** means Qantas Airways Limited (ACN 009 661 901) and its Subsidiaries.

**Register** of Members means the register of members of the Company (including any Members and MCI Holders) under the Corporations Act and, if appropriate, includes a branch register.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member or Voting MCI Holder at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under article 15.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Shares** means a share in the capital of the Company and includes Member Shares and, unless expressly stated otherwise, MCIs.

**Subsidiary** has the meaning given to that term in the Corporations Act.

**Statutory Redeemable Preference Shares** means redeemable preference shares in the Company which, before 1 July 1999, were withdrawable shares in the Company and which became, on 1 July 1999, redeemable preference shares in the Company at the same time as the Company was registered as a public company limited by shares.



**Transitional Redeemable Preference Shares** means redeemable preference shares in the Company issued between 1 July 1999 and 31 July 2001 (inclusive).

**Voting MCI Holder** means an MCI Holder who has one vote at a general meeting of the Company either because such MCI Holder is also a Member or because the MCI Holder has been granted one vote under the terms of issue of the MCIs he or she holds.

**Voting Qualification Criteria** of a Member means at the relevant date:

- (a) the Member holds five Member Shares in the Company; and
- (b) the Member is not a minor.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) a reference to a document includes any variation or replacement of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- (e) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (g) a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (h) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;
- (i) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (k) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member or an MCI Holder may be exercised at any time and from time to time;
- (l) a reference to signing or signature is a reference to any authentication mechanism used to verify, without limitation, the following:
  - (i) that the person to whom the information is communicated is authorised to receive such information;
  - (ii) where applicable that the person named in the application form agrees to the terms upon which the application is accepted; and

- (iii) where applicable, that the person named in the voting form (including proxy form) is a member of the company and has authorised the lodgement of the form (including any instructions contained therein);
- (m) a reference to “**writing**” or “**written**” includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (n) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair, as appropriate; and
- (o) a reference to a person being “**present**” at a meeting includes participating using technology approved by the Directors in accordance with this Constitution.

### **1.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

### **1.4 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

### **1.5 No intention for demutualisation**

The adoption of this Constitution is not intended to have any of the effects contemplated in clause 29(1) of schedule 4 of the Corporations Act. The occurrence of any of those events is referred to as a 'demutualisation'. If the adoption of any provision of this Constitution results in a demutualisation, then that provision is severed from this Constitution and, to the extent permitted by law, is replaced by such provisions of the repealed constitution which were in force immediately before the adoption of this Constitution as are necessary or required so that the adoption of this Constitution does not cause or result in any demutualisation.

### **1.6 Intention to be an MCI mutual entity**

The Company is intended to be an MCI mutual entity for the purposes of the Corporations Act.

# Constitution

## Schedule 2 – Election of Elected Directors

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### 1 Holding of election

- (a) Subject to paragraph (b) of this clause, an election of Elected Directors of the Company is to be held by ballot.
  - (b) Where nominations are equal to or less than the number of positions to be filled, elections will not be held by ballot and Elected Directors will be elected by separate resolution for each candidate at the Company's annual general meeting.
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### 2 Appointment of Returning Officers

The Directors must appoint a returning officer (“**Returning Officer**”) who may appoint assistant returning officers, none of whom can be a Director of the Company or a person who intends to accept a nomination for the office of Director.

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### 3 Electoral roll

The Secretary must prepare and give the Returning Officer a list of Members and any Voting MCI Holders eligible to vote on the election of Elected Directors, made up to the day before nominations for the election close under clause 4 of this Schedule 2.

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### 4 Nominations

#### 4.1 Call for nominations

The Directors must call for nominations at least 56 days prior to the annual general meeting.

#### 4.2 Close of nomination period

Nominations close on the date nominated in the notice calling for nominations, but no later than 35 days before the annual general meeting.

#### 4.3 Eligibility for nomination

In order to be nominated, a candidate must:

- (a) be eligible for election under article 12.8 of the Constitution;
- (b) be nominated by two Members who are entitled to vote;
- (c) consent to the nomination; and
- (d) provide the declaration in accordance with clause 5.

#### 4.4 Re-election of retiring Elected Directors

A retiring Elected Director may stand for re-election without nomination but must be eligible for election under articles 12.8 and 12.10 of the Constitution.

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## 5 Declaration by candidate

A candidate must furnish to the Company a declaration in such form as the Directors may require:

- (a) as to his or her eligibility for election under article 12.8 of the Constitution; and
- (b) as to whether he or she:
  - (i) has any interest in a contract or a proposed contract, with the Company; or
  - (ii) holds an office or has an interest in property, whereby, whether directly or indirectly, duties or interests may be created that could conflict with a Director's duties or interests as a Director of the Company.

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## 6 Rejection of nomination

- (a) The Returning Officer must scrutinise nominations immediately upon receipt and reject a nomination where it appears to the Returning Officer that the candidate is not eligible under clause 4.3 (save as to the requirement in article 12.8(a)(v) of the Constitution).
- (b) The Directors or a committee appointed or nominated by the Directors for the purpose, must scrutinise nominations immediately on receipt to assess whether a candidate is eligible under article 12.8(a)(v) of the Constitution. The Secretary must notify the Returning Officer of the Directors' or committee's assessment. If the Directors or committee assesses that the candidate is not eligible under article 12.8(a)(v) of the Constitution, then the Returning Officer must reject the nomination.
- (c) Upon rejecting a nomination, the Returning Officer is to notify immediately the candidate, the candidate's proposers and the Directors.

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## 7 Appointment of scrutineer

- (a) A candidate may appoint a scrutineer and the Directors may appoint a maximum of three scrutineers, none of whom is a candidate or an employee of the Company.
- (b) The duties and responsibilities of scrutineers are to:
  - (i) observe the sorting, counting and recording of ballot papers;
  - (ii) ensure that the votes of unrejected ballot papers are correctly credited to the appropriate candidates; and
  - (iii) raise any query with the Returning Officer regarding any of the ballot papers.

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## 8 Ballot papers

- (a) After nominations have closed under clause 4 of this Schedule 2, the Returning Officer is to prepare ballot papers for the election.

- (b) The order in which the candidates appear on the ballot paper is to be determined by the Returning Officer by lot.
- (c) The Returning Officer must cause some authenticating mark to appear on each ballot paper prior to their distribution to Members and any Voting MCI Holders.
- (d) The Returning Officer will also ensure that an interactive facsimile of the voting paper is posted on the Company's internet site, in the secure online banking section, to facilitate electronic voting.

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## **9 Postal and electronic votes**

### **9.1 Members and any Voting MCI Holders may only vote once**

Members and any Voting MCI Holders may lodge votes by post or electronically in accordance with this clause 9 but may only vote once.

### **9.2 Facilitating voting**

The Returning Officer must send to each Member and any Voting MCI Holder who is entitled to vote at least 28 days before the annual general meeting:

- (a) all information reasonably necessary to facilitate electronic voting under clause 9.5 of this Schedule 2; or
- (b) where a Member or Voting MCI Holder has elected to receive a postal ballot paper:
  - (i) a postal ballot paper;
  - (ii) an unsealed envelope, marked 'Ballot Paper';
  - (iii) an unsealed envelope, marked 'Returning Officer', the reverse side of which shall bear the following:
    - (A) in the case of a Member, the Member's membership number and space for signature (to be placed on the inside flap so it is not visible when the envelope is sealed); and
    - (B) the Member's or Voting MCI Holder's name and address; and
  - (iv) a 'Reply Paid' postal envelope addressed to the Returning Officer.

### **9.3 Delivery of ballot papers**

Ballot papers and other documents under clause 9.2 of this Schedule 2 may be delivered in accordance with article 19 of the Constitution.

### **9.4 Postal voting**

Any Member and any Voting MCI Holder exercising a right to vote by post must:

- (a) complete the ballot paper in accordance with this Constitution;
- (b) place the ballot papers in the envelope marked 'Ballot Paper';

- (c) place the sealed 'Ballot Paper' envelope in the envelope marked 'Returning Officer', complete it and:
  - (i) return it by post to the Returning Officer; or
  - (ii) lodge it in the ballot boxes provided at offices of the Company.

## 9.5 Electronic voting

Any Member or Voting MCI Holder exercising a right to vote electronically must:

- (a) complete the electronic ballot paper in accordance with the Constitution and any instructions for electronic lodgement that may be determined by the Directors;
- (b) ensure that the electronic ballot paper is submitted to the Returning Officer in accordance with the instructions accompanying the electronic ballot paper.

## 9.6 Processing votes

- (a) A Member and any Voting MCI Holder must ensure that:
  - (i) his or her ballot papers are received by the Returning Officer; or
  - (ii) his or her electronic ballot paper is submitted to the Returning Officer in accordance with clause 9.5(b) of this Schedule 2,by noon on the day fixed for the closing of the ballot.
- (b) For the purposes of the election:
  - (i) a ballot paper not received by the Returning Officer prior to the closing of the ballot; and
  - (ii) an electronic ballot paper not submitted to the Returning Officer in accordance with clause 9.5(b) of this Schedule 2 prior to the closing of the ballot,

is informal. For electronic voting, the Returning Officer is not liable for an electronic ballot paper not received as a result of any failure in the electronic information or computer system of the Company, of the Member or Voting MCI Holder or of any third party provider.

- (c) All ballot papers received by the Returning Officer are to be kept in secured ballot boxes until the closure of the ballot. All electronic ballot papers submitted to the Returning Officer are to be protected no less favourably than a ballot paper received by post.
- (d) A Member or Voting MCI Holder who has not received a ballot paper in accordance with the Constitution or has spoiled it may send to the Returning Officer a declaration to that effect and the Returning Officer must:
  - (i) send a duplicate ballot paper to that Member or Voting MCI Holder including any instructions necessary to facilitate electronic voting under clause 9.5 of this Schedule 2;
  - (ii) mark the envelope marked 'Returning Officer', 'Duplicate'; and

- (iii) keep a record of all duplicate ballot papers issued, including such records as may be necessary in relation to electronic voting.

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## 10 Closure of the ballot

The ballot closes 14 days before the annual general meeting.

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## 11 Procedures after closure of the ballot

As soon as practicable after the close of the ballot, the Returning Officer must deal with the ballots as follows:

- (a) open all 'Reply Paid' postal envelopes and extract envelopes marked 'Returning Officer';
- (b) for each envelope marked 'Returning Officer', mark the Member's or Voting MCI Holder's name as shown on the envelope off the electoral roll;
- (c) where a duplicate ballot paper has been issued and the original envelope marked 'Returning Officer' received, mark the original envelope 'rejected';
- (d) if the envelope marked 'Returning Officer' has not been signed, or the signature is identified as not being the Member's or Voting MCI Holder's or there is insufficient detail to identify the Member or Voting MCI Holder, mark the envelope 'rejected';
- (e) extract the envelopes marked 'Ballot Paper' from all unrejected envelopes marked 'Returning Officer', ensuring that no envelope marked 'Ballot Paper' could subsequently be identified with any particular Member or Voting MCI Holder;
- (f) when all the envelopes marked 'Returning Officer' have been so dealt with, cause all the envelopes marked 'Ballot Paper' to be opened and the ballot papers to be taken out;
- (g) in respect of electronic ballot papers:
  - (i) ensure that an electronic electoral database system ('the electoral database system') will mark the Member's or Voting MCI Holder's name off the electoral roll when an electronic ballot paper is submitted;
  - (ii) ensure the electoral database system will recognise the electronic signature of the Member or Voting MCI Holder and authenticate or reject signatures as appropriate;
  - (iii) cause a list of rejected electronic ballot papers to be produced; and
  - (iv) cause the unrejected electronic ballot papers to be recorded in such a way that they cannot subsequently be identified with any particular Member or Voting MCI Holder.
- (h) in respect of both electronic ballot papers and ballot papers:

- (i) cause the ballot papers and the electronic ballot papers to be scrutinised under his or her supervision and reject such of those ballot papers as he or she finds to be informal under clause 11.2 of this Schedule 2;
- (ii) count the votes in accordance with clause 12 of this Schedule 2;
- (iii) prepare and sign a declaration of the ballot as to:
  - (A) the number of ballot papers and electronic ballot papers lodged;
  - (B) the number of formal votes;
  - (C) the number of informal votes;
  - (D) the number of votes cast for each candidate; and
  - (E) the names of those persons elected.
- (iv) deliver the statement to the Secretary.

## **11.2 Informal ballot papers**

A ballot paper or electronic ballot paper is informal if:

- (a) it is not authenticated by the authenticating mark of the Returning Officer or by the electoral database system;
- (b) it indicates a vote or preference for a candidate for more than the number of vacant positions; or
- (c) it has no vote indicated on it or it does not indicate the Member's or Voting MCI Holder's preference for a candidate.

## **11.3 Lodgement of both electronic and postal ballot papers**

If a Member or Voting MCI Holder lodges both an electronic ballot paper and a postal ballot paper, then the Returning Officer will:

- (a) if one of the ballot papers is informal, accept the formal ballot paper;
- (b) if both ballot papers are formal, accept the ballot paper received first,

unless the Member or Voting MCI Holder has requested a duplicate ballot paper after an electronic ballot paper is submitted, in which case the Returning Officer must accept the duplicate ballot paper to the exclusion of the electronic ballot paper, even if the duplicate ballot paper is subsequently ruled informal.

## **11.4 Preservation of ballot papers**

The Returning Officer must preserve the ballot papers and electronic ballot papers for a period of at least three months after the declaration of the ballot.

## **11.5 No invalidity**

No election shall be voided on account of any error or omission of the Returning Officer which did not affect the results of the election.



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## 12 Voting system

- (a) On any ballot, the persons receiving the highest number of votes in accordance with the numbers of vacancies to be filled are elected as Elected Directors.
- (b) In the case of an equality of votes, the person to be elected must be decided by lot.

## TIMETABLE FOR VOTING PROCEDURE AND ANNUAL GENERAL MEETINGS

Days before annual general meeting	Procedures for election of Elected Directors	Procedures for annual general meeting
56	Call for nominations	Advance notification of annual general meeting
42	-	End of time for Members and any Voting MCI Holders to notify any proposed resolution for inclusion in notice of annual general meeting
35	Close of nominations	-
28	Ballot papers sent to Members and any Voting MCI Holders	
21		Notice of annual general meeting issued
14	Closure of ballot	
0	Annual general meeting	

Note: Article 11.14 of the Constitution determines the eligibility of a Member and Voting MCI Holder to vote at an annual general meeting or a special general meeting.

# Constitution

## Schedule 3 – Consideration of demutualisation resolutions

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### 1 Interpretation

In this Schedule 3, unless the contrary intention appears:

**Additional Costs** means all costs reasonably incurred by the Company in complying with its obligations under clause 4.1 of this Schedule 3.

**Additional Information** means:

- (a) an explanation as to how the Demutualisation Resolution will affect Member rights as a holder of Member Shares and as a customer of the Company;
- (b) an explanation as to the effect of the Demutualisation Resolution on the Company and Members with respect to:
  - (i) the rights of Members to vote and to participate in the distribution of profits and reserves of the Company and the loss of any such rights;
  - (ii) the effect on the business, operations, employees, products, services, pricing and distribution network of the Company;
- (c) an explanation of the mutuality benefits to Members that will be lost if the Demutualisation Resolution is passed; and
- (d) an explanation of the availability and effect of other alternatives to the Demutualisation Resolution.

**Demutualisation Resolution** means a proposed resolution, or combination of proposed resolutions:

- (a) which, if passed, will or may result in:
  - (i) the Company ceasing to be an authorised deposit-taking institution that can or could assume or use the expressions “Credit Union”, “Credit Society” or “Credit Co-operative” without committing an offence under the *Banking Act 1959*;
  - (ii) a voluntary transfer of the Company’s business, pursuant to the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is not an authorised deposit taking institution that can or could assume or use the expressions “Credit Union”, “Credit Society” or “Credit Co-operative” without committing an offence under the *Banking Act 1959*;
  - (iii) Shares becoming transferable or capable of sale or assignment (other than as provided in this Constitution);
  - (iv) a right to vote attaching to any share other than a Share;
- (b) in relation to which the consent of the Treasurer is required pursuant to either section 63 of the *Banking Act 1959* or section 11 of the *Financial Sector (Shareholdings) Act 1998*, unless the consent is required for the purposes of a voluntary transfer of the Company’s business, pursuant to

the *Financial Sector (Transfers of Business) Act 1999*, to an Entity that is an authorised deposit taking institution that can or could assume or use the expressions “Credit Union”, “Credit Society” or “Credit Co-operative” without committing an offence under the *Banking Act 1959*; or

- (c) the effect of which would be to modify or repeal any clause in this Schedule 3; or
- (d) the effect of which would be to modify or repeal the Constitution where the effect of the modification or repeal is to modify, exclude or restrict the operation of the clauses in this Schedule 3.

**Directors’ Statement** means a statement by the Directors containing:

- (a) the recommendation of each Director as to whether the Demutualisation Resolution should be passed and their reasons for making that recommendation; and
- (b) details of any benefit to be received by the Directors if the Demutualisation Resolution is passed.

**Entity** includes any:

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

**Information** means:

- (a) a disclosure statement that:
  - (i) contains all the information that Members would reasonably require and expect to be given to make an informed decision about the Demutualisation Resolution, including but not limited to the Additional Information;
  - (ii) states that the Demutualisation Resolution may alter the Company’s mutual structure and outlines the intentions of the Member or Entity seeking to convene or convening a meeting of the Company:
    - (A) in relation to the future of the Company if the Demutualisation Resolution is passed;
    - (B) in relation to Members’ interests if the Demutualisation Resolution is passed; and
    - (C) in relation to the Directors if the Demutualisation Resolution is passed; and
  - (iii) explains the effect the passing of the Demutualisation Resolution is likely to have on the business, operations, employees, products, services, pricing and distribution network of the Company;

- (b) an estimate of the financial benefits (if any) the Members, the Directors and/or other officers of the Company will be offered if the Demutualisation Resolution is passed; and
- (c) a report by an expert that:
  - (i) states whether, in the expert's opinion:
    - (A) the Demutualisation Resolution is in the best interests of the Members of the Company as a whole; and
    - (B) whether the Demutualisation Resolution is fair and reasonable to Members having regard to any change of voting rights and the right to participate in profits and reserves;
  - (ii) sets out the expert's opinions in relation to the Additional Information;
  - (iii) gives the expert's reasons for forming those opinions;
  - (iv) complies with the requirements of clause 33 of Schedule 4 of the Corporations Act; and
  - (v) contains any additional information required to be provided under the Corporations Act.

**Member** means a Member as that term is defined in Schedule 1 of the Constitution.

**Requisitionists** means the Members who request the convening of a general meeting that is convened by the Directors at the request of Members made under article 10.3 of the Constitution or who call the meeting in accordance with sections 249E or 249F of the Corporations Act.

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## 2 Application of Schedule 3

Notwithstanding any provision contained in this Constitution to the contrary, this Schedule 3 will apply if a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered.

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## 3 Requirement for General Meeting

If a meeting of the Company is convened, or is to be convened, at which a Demutualisation Resolution will be considered:

- (a) a general meeting must be convened and conducted in accordance with this Constitution to consider the Demutualisation Resolution;
- (b) the information required by clause 4 of this Schedule 3 must be provided to Members in convening the general meeting to consider the Demutualisation Resolution;
- (c) the Demutualisation Resolution may not be moved at the general meeting, or passed at the general meeting, if the Demutualisation Resolution, or a substantially similar Demutualisation Resolution, was moved at a general meeting held within the three years prior to the general meeting and not passed; and

- (d) the Demutualisation Resolution shall only be passed at the general meeting if:
  - (i) at least 25% of all Members entitled to vote on the Demutualisation Resolution do vote on the Demutualisation Resolution; and
  - (ii) at least 75% of the votes cast by those Members approve the Demutualisation Resolution.

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## **4 Disclosure Requirements**

### **4.1 If convened in accordance with article 10.3(a)**

If a meeting of the Company at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with article 10.3(a) of the Constitution, or otherwise than in accordance with article 10.3(b) of the Constitution:

- (a) the Member or Members, and/or Voting MCI Holder or Voting MCI Holders requesting the convening of the meeting shall at the time of requesting the convening of the meeting provide the Information to the Company; and
- (b) the Company shall at the time of convening the meeting provide the Members with:
  - (i) notice of the Demutualisation Resolution in accordance with section 249L(1)(c) of the Corporations Act;
  - (ii) the Information supplied to the Company;
  - (iii) the Directors' Statement; and
  - (iv) such further information, if any, as the Directors consider appropriate.

### **4.2 If convened in accordance with article 10.3(b)**

If a meeting of the Company at which a Demutualisation Resolution will be considered is convened or is to be convened in accordance with article 10.3(b) of the Constitution, the Member or Members and/or Voting MCI Holder, or Voting MCI Holders requesting the convening of the meeting shall at the time of convening the meeting provide the Information to the Members (being the persons entitled to vote on the Demutualisation Resolution).

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## **5 Costs**

### **5.1 Indemnity and deposit**

If a meeting of the Company at which a Demutualisation Resolution will be considered is convened by the Directors at the request of Members and/or Voting MCI Holders made under article 10.3 of the Constitution or by Members and/or Voting MCI Holders in accordance with sections 249E or 249F of the Corporations Act, then the Requisitionists will, at the time of making the request or convening the meeting:

- (a) provide to the Company an indemnity in respect of the liability that the Requisitionists may incur to the Company for the Additional Costs in a form satisfactory to the Directors; and
- (b) if so requested by the Company, deposit with the Company an amount determined by the Directors (acting reasonably) on account of the liability that the Requisitionists may incur to the Company for Additional Costs, which sum the Company may set off against the Requisitionists' liability to the Company for Additional Costs if and when the Requisitionists become liable to pay the Additional Costs to the Company;

and, if the Demutualisation Resolution is not passed at a general meeting, the Requisitionists will be jointly and severally liable to the Company for the Additional Costs and will pay the Additional Costs to the Company within 7 days of the Company making a written demand for payment.

## 5.2 Refund

The Company will refund to the Requisitionists:

- (a) if the Demutualisation Resolution is passed at a general meeting, the whole of any amount deposited with the Company pursuant to clause 5.1 of this Schedule 3;
- (b) if the Demutualisation Resolution is not passed at a general meeting, any amount by which the amount deposited with the Company pursuant to clause 5.1 of this Schedule 3 exceeds the Additional Costs.

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## 6 MCIs

- (a) The provisions of this Schedule 3 will not apply in relation to:
  - (i) the creation or issuance of, or the agreement to create or issue; nor
  - (ii) the cancellation or variation of any rights attached to or reduction in capital in relation to, any MCIs or capital instruments convertible to MCIs (including, in each case, MCIs of different classes and with different rights), or class of them.
- (b) The provisions of this Schedule 3 will not apply to the extent any amendment to this Constitution relates to or facilitates anything referred to in clause 6(a) of this Schedule 3.
- (c) For the avoidance of doubt, a reference to "shares" or "securities" in this Schedule does not include a reference to MCIs.
- (d) Any Demutualisation Resolution passed at a general meeting and approved in accordance with the terms of this Schedule 3, that would result in the company ceasing to be an MCI mutual entity (as defined in the Corporations Act) can only take effect if:
  - (i) there are no MCIs in the company; or
  - (ii) Subject to article 3.3(d) of the Constitution, if a Demutualisation Resolution provides for each MCI to be cancelled at or before the time the Company ceases to be an MCI mutual entity (as defined in the Corporations Act) (whether or not the holders of

the MCIs to be cancelled are to receive other securities in respect of those MCIs).