

**Rules of  
Dom Polski Society Co-op Limited**

CO-OPERATIVES ACT 1997

V.4 -27<sup>th</sup> November 2011

# CONTENTS

## **Rule**

1. Definitions
2. Alteration of the rules
3. Name
4. Active membership provisions
5. Qualifications and shareholding required for membership
6. Membership and shares
7. Ceasing membership
8. Expulsion of members
9. Suspension of members
10. Disputes
11. Fines
12. Capital and shares
13. Liability of members
14. Calls on shares
15. Forfeiture of shares
16. Share certificates
17. Transfer and transmission of shares
18. Forfeitures and cancellations - Inactive members
19. Forfeited shares
20. Death of a member
21. Registration as trustee, executor or administrator
22. Entitlements and liabilities of person registered as trustee, administrator etc.
23. Transfer and transmission of debentures
24. Annual general meetings
25. Special general meetings
26. Notice of general meetings
27. Business at general meetings
28. Quorum at general meetings
29. Presiding at general meetings
30. Adjournment of meetings
31. Standing orders at meetings
32. Attendance and voting at general meetings
33. Postal ballot
34. Poll at general meetings
35. Special and ordinary resolutions
36. Board of directors
37. Qualifications of directors
38. Retirement of directors
39. Election of directors
40. Manner of election

41. Casual vacancy
42. Removal from the office of director
43. Remuneration
44. Deputy directors
45. Proceedings of the board
46. Quorum for board meetings
47. Chairperson of board
48. Financial year
49. Seal
50. Custody and inspection of records
51. Banking
52. Safekeeping of securities
53. Audit
54. Co-operative funds
55. Provision for loss
56. Winding up

## 1. Definitions

In these rules -

“**Act**” means the Co-operatives Act 1997;

“**Appendix**” means Appendix to these rules;

“**board**” means the board of the co-operative;

“**co-operative**” means Dom Polski Society Co-op Limited;

“**general meeting**” means any annual or special general meeting;

“**member**” means a member of the co-operative;

“**month**” means calendar month;

“**Commission**” means the Corporate Affairs Commission;

“**regulations**” means the Co-operatives Regulations 1997.

## 2. Alteration of the rules

- (1) These rules may be altered by a special resolution in accordance with section 108 of the Act or by a resolution of the board in accordance with section 109 of the Act or as otherwise permitted by the Act.
- (2) A proposed alteration of these rules must be approved by the Commission under section 107 of the Act before the resolution altering the rules is passed.
- (3) An alteration of these rules does not take effect unless and until it is registered by the Commission under section 110 of the Act.
- (4) Any member is entitled to obtain from the co-operative a copy of these rules on payment of the amount of \$5.00.

### 3. Name

- (1) The name of the co-operative is **Dom Polski Society Co-op Limited** . [s. 247]
- (2) The co-operative may change its name in accordance with section 250 of the Act.
- (3) The co-operative may abbreviate its name to **Dom Polski Society Co-op Ltd** [s. 248].

### 4. Active membership provisions

- (1) The primary role of the co-operative through the activities of its members and corporate members, can be described as follows:
    - (a) To provide and maintain a centre, known as Dom Polski Centre, for the cultural, sporting, social and other activities of Polish community in Australia; and
    - (b) To promote Polish culture in South Australia; and
    - (c) To provide a service to the community in the context of the principles of multiculturalism; and
    - (d) To provide a clubhouse and other conveniences and generally to offer to members of the co-operative and others all the usual privileges, advantages, conveniences and accommodation of a club; and
    - (e) To establish and maintain facilities for the benefit of the members of the co-operative and others; and
    - (f) To establish, provide and maintain a hall or other suitable rooms, buildings or places and to permit the same or any part thereof to be used as the board shall think fit for any purpose, public or private.
- [s. 114]

- (2) In order to establish active membership of the co-operative a member must comply with the following active membership requirement :

A member who is not a corporate member shall, each year, either:

- be recorded as an active volunteer of Dom Polski Society Co-op Ltd or its corporate member organisation or
- participate in at least one activity or function organised by members and/or corporate members or by Polish community groups who are sponsored by Dom Polski Society Co-op Ltd for the purpose of carrying out all or any of the primary activities of the co-operative as described in sub-rule (1) .

Senior or interstate members may instead, with the Board's approval, subscribe at a fee regulated by the Board, to the quarterly Bulletin of DP or to the monthly Panorama.

A corporate member of the cooperative shall, each year, organise at least one activity or function carrying out all or any of the primary activities of the cooperative as described in sub-rule (1).

[s. 115]

- (3) All members must be active members of the co-operative. [s. 62(2)]
- (4) If a member fails or ceases to be an active member, the board must in accordance with Division 4 of Part 6 of the Act -
  - (a) declare the membership of the member cancelled; and
  - (b) declare the shares of the member forfeit.

## **5. Qualifications and shareholding required for membership**

- (1) A person is not qualified to be admitted to membership unless there are reasonable grounds for believing that the person will be an active member of the co-operative. [s. 62]
- (2) Every member must hold at least 25 shares.

## 6. Membership and shares

- (1) An application for membership or shares in the co-operative must -
  - (a) be in a form approved by the board; and
  - (b) be lodged at the registered office of the co-operative; and
  - (c) be accompanied by the payment of the deposit not less than 10% of the nominal value of purchased shares.
- (2) An application for membership must include an application for a share in the co-operative.
- (3) The board must consider each application.
- (4) The board at its sole discretion may accept or reject an application for membership or shares and need not give any reason for its decision.
- (5) If the board approves an application for membership or shares -
  - (a) the relevant shares must be allotted to the applicant; and
  - (b) the board must ensure that the name of the person and the number of shares allotted is entered in the register of members, directors and shares in accordance with sections 70 and 239 of the Act; and
  - (c) the board must notify the applicant in writing of allotment of the shares and of the entry in the register; and
  - (d) the applicant for membership becomes entitled to exercise the rights of membership when the member's name appears in the register of members;
- (6) If the board rejects an application, the whole of the money lodged in respect of the application must be refunded to the applicant without interest.

## 7. Ceasing membership

A person ceases to be a member in each of the following circumstances -

- (a) if the member's membership is cancelled under Part 6 of the Act (Active Membership) ;
- (b) if the member is expelled in accordance with these rules;

- (c) if the member becomes bankrupt and the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative;
- (d) on the death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's share is transferred to another person and the transferee is registered as the holder of the share;
- (g) if the member's share is forfeited in accordance with the provisions of the Act or the provisions of these rules;
- (h) if the member's share is purchased by the co-operative in accordance with the provisions of these rules;
- (i) if a member's share is sold by the co-operative pursuant to any power in these rules and the purchaser is registered as holder in the member's place;
- (j) if the amount paid up on the member's share is repaid to the member in accordance with the provisions of these rules;
- (k) on notice in writing given by the member to the Secretary, of the member's resignation from membership; or
- (l) in the case of a member that is a body corporate, if the body is dissolved.

[ss. 67 and 68]

## **8. Expulsion of members**

- (1) A member may be expelled from the co-operative if the co-operative by special resolution determines that the member should be expelled on the ground that -
  - (a) the member has failed to discharge the member's obligations to the co-operative under the Act or these rules;
  - (b) the member has acted in a manner that has -
    - (i) prevented or hindered the co-operative in carrying out any of its primary activities; or
    - (ii) brought the co-operative into disrepute; or
  - (c) the member has acted in a manner contrary to any of the co-operative principles and in so acting caused the co-operative harm.

- (2) The member must be given at least 28 days written notice of the proposed resolution and of the date, time and place of the meeting at which the resolution will be moved.
- (3) The procedure at the general meeting to consider the proposed resolution is as follows -
  - (a) the member must be given a reasonable opportunity to be heard at the meeting;
  - (b) the member is entitled to call witnesses and to cross examine witnesses called against the member;
  - (c) if the member fails, without reasonable excuse, to attend at the time and place of which notice has been given, the co-operative may consider the matter in the absence of the member;
  - (d) after considering the matter, the co-operative may by special resolution determine to expel the member.
- (4) The expulsion of the member does not take effect until the special resolution is registered with the Commission. [s.191]
- (5) When a member is expelled, the co-operative must, in accordance with section 77 of the Act, repay to the member an amount determined in accordance with that section in respect of the member's shares and cancel the member's shares.

## **9. Suspension of members**

- (1) A member may be suspended from membership of the co-operative for a period not exceeding one year if the co-operative by special resolution determines that the member should be so suspended on the ground that -
  - (a) the member has contravened these rules; or
  - (b) the member has failed to discharge the member's obligations to the co-operative under these rules; or
  - (c) the member has acted in a manner detrimental to the co-operative.
- (2) The member must be given at least 28 days written notice of the proposed resolution and of the date, time and place of the meeting at which the resolution will be moved.

- (3) The procedure at the general meeting to consider the proposed resolution is as follows -
  - (a) the member must be given a reasonable opportunity to be heard at the meeting;
  - (b) the member is entitled to call witnesses and to cross examine witnesses called against the member;
  - (c) if the member fails, without reasonable cause, to attend at the time and place of which notice has been given, the co-operative may consider the matter in the absence of the member;
  - (d) after considering the matter, the co-operative may by special resolution determine to suspend the member.
- (4) A member who is suspended ceases during the suspension to have the rights of a member except as otherwise provided in the Act or these rules.

## 10. Disputes

- (1) The grievance procedure set out in this rule applies to disputes under these rules between -
  - (a) a member and another member; or
  - (b) a member and the co-operative.
- (2) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (3) If the parties are unable to resolve the dispute at the meeting under sub-rule (2) or if a party fails to attend that meeting, then the parties must, within 10 days, submit the matter in dispute to arbitration under the provisions of the *Commercial Arbitration Act 1986*.
- (4) The cost of such arbitration will be borne by the disputing parties in such proportions as the arbitrators may determine.
- (5) In this rule “member” includes any person who was a member not more than 6 months before the dispute occurred. [s. 83(4)]

- This rule provides for a procedure to settle disputes. Note that section 84 of the Act provides another procedure whereby application may be made to the Supreme Court for an order declaring and enforcing rights or obligations of members between themselves, or of the co-operative and a member between themselves. The Court may refuse to make an order, or may make an order for costs, if the Court is of the opinion that the application is unreasonable or the issue trivial.

## **11. Fines**

- (1) The co-operative may impose a fine on a member for any infringement of these rules. [s. 75]
- (2) The fine must not exceed the amount of \$1000. [s. 102(7)]

## **12. Capital and shares**

- (1) The capital of the co-operative is to be raised by the issue of shares which are to have a nominal value of \$2.00. [s. 145(2)]
- (2) A share must not be allotted unless at least 10% of the nominal value of the share has been paid. [s.146(1)]

## **13. Liability of members**

- (1) A member is not, as a member, under any personal liability to the co-operative except for the amount, if any, unpaid on the shares held by the

member together with any charges payable by the member to the co-operative as required by these rules. [s. 71]

- (2) On the death of a member, the member's estate remains liable as the member until the member's personal representative or some other person is registered in the member's place. [s. 67(2)]

## 14. Calls on shares

- (1) The board may make calls on the members in respect of any money unpaid on their shares.
- (2) Sub-rule (1) does not apply if the terms of issue of the shares provide for the money unpaid on the shares to be paid at fixed times.
- (3) A call must not -
  - (a) exceed one-quarter of the sum of the nominal value of the shares; or
  - (b) be payable earlier than one month after the day fixed for the payment of the last preceding call.
- (4) A member must be given at least 14 days notice specifying the time or times and place of payment of the call.
- (5) A member who receives notice of a call must pay the amount of the call on the member's shares to the co-operative at the time or times and at the place specified in the notice.
- (6) The board may revoke or postpone a call.
- (7) A sum that becomes payable on a share under the terms of issue of the share is deemed for the purposes of these rules to be an amount payable on a call notified under this rule as if the time and place for payment specified in the terms of issue were the time and place for payment of the call.
- (8) The board may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

## 15. Forfeiture of shares

- (1) If a member fails to pay a call on any day appointed for the payment of the call, the board may serve a notice on the member requiring payment of so much of the call as is unpaid.
- (2) The notice must -
  - (a) specify a day (being not less than 28 days after the date of service of the notice) on or before which the payment required by the notice is to be paid; and
  - (b) state that if the payment is not so paid, the shares in respect of which the call was made are liable to be forfeited.
- (3) If the payment is not made in accordance with the notice, the board may, by resolution, declare that the shares are forfeited.
- (4) The board's declaration has the effect of forfeiting the shares concerned.

## 16. Share certificates

- (1) The board, on the application of a person holding shares in the co-operative, must issue to that person, without payment, a certificate under the seal of the co-operative specifying the shares held by that person and the amount paid up on those shares.
- (2) However, if shares are held jointly -
  - (a) the board is not required to issue more than one share certificate in respect of those shares and
  - (b) the delivery of the share certificate to one joint shareholder is sufficient delivery to all.
- (3) If the board is satisfied that a share certificate issued by the co-operative is defaced, lost or destroyed, the board may issue a duplicate certificate on payment of a fee determined by the board but not exceeding the maximum of \$10.00.

## 17. Transfer and transmission of shares

- (1) The instrument of transfer of any share shall be executed by or on behalf of the transferor (the giver) and the transferee (the receiver of the share).
- (2) The transferor remains the holder of the share until the name of the transferee is entered in the register of members in respect of the share.
- (3) A transfer of shares is to be in a form approved by the board.
- (4) A share cannot be sold or transferred except -
  - (a) with the consent of the board, to any person who is qualified to be admitted to membership of the co-operative under rules 5 and 6; or
  - (b) as otherwise provided by the Act or these rules.
- (5) The board may refuse to register a transfer of shares -
  - (a) to a person who is not eligible to be a member; or
  - (b) to a person whom the board does not approve; or
  - (c) if the co-operative has a lien or charge over the shares.
- (6) If the board refuses to register a transfer of shares, it must send written notice of its decision to the proposed transferee within 14 days after making that decision.
- (7) The board may decline to recognise any instrument of transfer unless -
  - (a) a fee of 10 cents per share but not exceeding \$10.00 is paid by the member to the co-operative for the transfer; and
  - (b) the instrument of transfer is accompanied by the certificate (if any) of the shares to which it relates, and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer.
- (8) The board may suspend the registration of transfers during the 21 days immediately preceding the annual general meeting in each year.

## **18. Forfeitures and cancellations - Inactive members**

- (1) In accordance with section 126 of the Act, the board, after giving any notice required under section 131 of the Act, must declare the membership of a member cancelled if -
  - (a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a period of at least 3 years before that time; or
  - (b) the member is not presently an active member of the co-operative and has not been an active member of the co-operative at any time during the period of 3 years immediately before that time.
- (2) Sub-rule (1) applies to a member only if he or she was a member of the co-operative throughout the period referred to in paragraph (a) or (b), as the case requires.
- (3) In accordance with section 127 of the Act, the board must declare the shares of a member to be forfeited at the same time as the member's membership is cancelled under section 126 of the Act.
- (4) The board's declaration has the effect of forfeiting the shares concerned.
- (5) If the membership of a member is cancelled any amount due to the member in respect of the cancellation must be dealt with in accordance with section 133 of the Act.

## **19. Forfeited shares**

- (1) The co-operative must cancel any share forfeited to the co-operative in accordance with the Act or these rules. [s. 173]
- (2) A person whose shares have been forfeited under the Act or these rules remains liable to the co-operative for any amount still unpaid at the date of forfeiture in respect of those shares.

## **20. Death of a member**

- (1) Subject to sections 79, 168 and 169 of the Act, on the death of the member, the board must transfer the deceased member's share or interest in the co-operative to -
  - (a) the executor or administrator of the deceased member; or
  - (b) with the consent of the board, to a person -
    - (i) who is specified by the personal representative of the deceased member in an application under section 79 of the Act; and
    - (ii) who is qualified to be a member in accordance with the Act and these rules.
- (2) The board may transfer the shares or interest of a deceased member to a person entitled in accordance with section 80 of the Act if -
  - (a) the total value of the shares or interest is less than \$10,000 (or such other amount as may be prescribed by the regulations); and
  - (b) there has not been a grant of administration of the estate, or probate of the will of the deceased member.

## **21. Registration as trustee, executor or administrator**

- (1) In accordance with sections 161 to 163 of the Act, the following persons may be registered as the holder of a share in the co-operative -
  - (a) the trustee, executor or administrator of the estate of a dead person, if the dead person was the holder of that share or was entitled in equity to that share;
  - (b) the administrator of the estate of an incapable person, if the incapable person was the holder of that share or was entitled in equity to that share;

- (c) the Official Trustee in Bankruptcy, if a bankrupt was the holder of that share or was entitled in equity to that share.
- (2) If a person is entitled in equity to a share in the co-operative, the consent of the co-operative and the holder of the share must be obtained before a person can be registered in respect of that share pursuant to sub-rule (1).

## **22. Entitlements and liabilities of person registered as trustee, administrator etc.**

Subject to the Act, a person registered pursuant to section 161, 162 or 163 of the Act and rule 21 is, while so registered -

- (a) entitled to the same dividends and other benefits; and
- (b) in accordance with section 164 of the Act, subject to the same liabilities and only those liabilities -

in respect of the share as those to which the person would have been subject if the share had remained, or had been, registered in the name of the dead person, the incapable person or the bankrupt.

## **23. Transfer and transmission of debentures**

- (1) The instrument of transfer of a debenture must be executed by the transferor (*the giver*) and the transferee (*the receiver*).
- (2) The transferor remains the holder of the debenture until the board consents to the transfer and the name of the transferee is entered in the registers of debentures in respect of the debenture.
- (3) A transfer of debentures must be in the form approved by the board.
- (4) The board may decline to recognise any instrument of transfer of a debenture and may decline to register the transfer unless -

- (a) a fee of \$5.00 is paid to the co-operative for the transfer; and
  - (b) the instrument of transfer is accompanied by the debenture and such other evidence as the board may reasonably require to show the right of the transferor to make the transfer; and
  - (c) any stamp duty payable in respect of the instrument of transfer has been paid.
- (5) If the board refuses to register a transfer of debenture, it must send written notice of its decision to the proposed transferee within 28 days after making that decision.

## **24. Annual general meetings**

### **24(A)**

- (1) Subject to the appropriate exemption having been granted by the commission pursuant to section 234 of the Act, the Society may report to members for a financial year by :
- (a) giving members notice that the financial report for the year, the directors report for the year and the auditors report on the financial report may be inspected at the registered office of the co-operative or will be sent to a member if the member requests the co-operative to send them the reports; and
  - (b) making the report available for inspection and complying with any requests under (a).
- (2) The co-operative must give notice under (1) by the earlier of –
- (c) 21 days before the next AGM after the end of the financial year; or
  - (d) 21 days less than 5 months after the end of the financial year
- (3) Reports requested by a member under (1) are to be sent within seven (7) days after the requestion is received by the co-operative.
- (4) Reports sent to a member under (3) are to be sent free of charge unless the member has already received a copy of them free of charge”.

### **24(B)**

- (1) The annual general meeting of the co-operative must be held within -

- (a) 5 months after the close of the financial year of the co-operative; or
  - (b) any further time that may be allowed by the Commission or is prescribed.
- (2) The board may determine the date, time and place of the annual general meeting.
  - (3) All general meetings of the co-operative other than the annual general meeting shall be special general meetings.
  - (4) If the board does not hold an annual general meeting within the required time, the members may requisition the meeting in accordance with section 204 of the Act.

## **25. Special general meetings**

- (1) A special general meeting of the co-operative may be convened at any time by the board of directors.
- (2) In accordance with section 204 of the Act, the board must convene a general meeting of the co-operative on the written requisition of the number of active members of the co-operative who together are able to cast at least 5% of the total number of votes able to be cast at a meeting of the co-operative.

## **26. Notice of general meetings**

- (1) The board must give each member at least 14 days notice of each general meeting.
- (2) The notice may be given in accordance with section 451 of the Act.
- (3) The notice must specify the place, the day and the time of the meeting and if special business is to be transacted, set out generally the nature of the special business.
- (4) If a special resolution is to be proposed at the meeting at least 21 days notice of that special resolution must be given to the members of the co-operative in accordance with section 187 of the Act.

- (5) A member of the co-operative who wishes to propose a resolution at a general meeting must give the co-operative written notice of the resolution.
- (6) If notice of an ordinary resolution is given under sub-rule (5) at least 21 days before the board gives notice of the meeting, the board must include details of that resolution in the notice of the meeting.

## **27. Business at general meetings**

- (1) The ordinary business of the annual general meeting shall be -
  - (a) to confirm minutes of the last preceding general meeting (whether annual or special);
  - (b) to receive from the board, auditors, or any officers of the co-operative reports upon the transactions of the co-operative during the financial year, including balance sheet, trading account, profit and loss account, statement of cash flows, and the state of affairs at the end of that year;
  - (c) to elect and determine the remuneration (if any) of directors.
  - (d) to determine the rates of dividend, bonus shares and rebate.
- (2) The annual general meeting may also transact special business of which notice has been given to members in accordance with these rules.
- (3) All business of a general meeting, other than ordinary business, is special business.

## **28. Quorum at general meetings**

- (1) An item of business must not be transacted at a meeting of a co-operative unless a quorum of members entitled to vote is present during the transaction of that item. [s. 202]
- (2) Subject to sub-rule (3) the quorum of the co-operative is 5 members entitled to vote at a meeting of the co-operative plus -

- (a) if the active membership of the co-operative exceeds 50 but does not exceed 200, 1 additional member for each 10 active members after the first 50 active members; and
  - (b) if the active membership of the co-operative exceeds 200, the additional members referred to in paragraph (a) and 1 additional member for each 50 active members after the first 200 active members.
- (3) If within half an hour after the appointed time for the meeting a quorum is not present, the meeting -
- (a) if convened upon the requisition of members, is abandoned; and
  - (b) in any other case is to be adjourned to the same day and time in the next week at the same place.

## **29. Presiding at general meetings**

- (1) Subject to this rule, the chairperson of the board presides at every general meeting of the co-operative.
- (2) If a motion to select another person to preside at the meeting is passed by the majority of members present at the meeting, the members must select one of their number to preside.
- (3) If the chairperson of the board is unable or unwilling to preside or is not present within 15 minutes after the time appointed for the meeting, the members present must select one of their number to preside.
- (4) The person selected under sub-rule (3) presides at that meeting until the time that the chairperson attends and is willing to act.

## **30. Adjournment of meetings**

- (1) The person presiding may, with the consent of a majority of members present at the meeting, adjourn the meeting from time to time and from place to place.
- (2) The person presiding must, if directed by a majority of members present at the meeting, adjourn the meeting to a date and time agreed.
- (3) No business may be transacted at an adjourned meeting other than business unfinished at the meeting which was adjourned.
- (4) This rule only applies if there is a quorum at the meeting to be adjourned.

## **31. Standing orders at meetings**

The co-operative in general meeting may determine the standing orders that must be observed by the co-operative at general meetings.

## **32. Attendance and voting at general meetings**

- (1) The right to vote attaches to membership and not shareholding. [s. 175]
- (2) A member of the co-operative is not entitled to vote at a meeting of the co-operative unless that person is an active member of the co-operative. [s. 179]
- (3) Subject to the Act and this rule, every member of the co-operative has only one vote at a meeting of the co-operative.
- (4) A member of a co-operative who is under 18 years of age is not entitled to vote. [s.64(3)]

In the case of joint membership -

- (a) the joint members have only one vote between them; and
  - (b) that vote may be exercised by the member whose name appears first in the register of members unless the other joint members otherwise direct. [s. 175(5)]
- (6) Subject to the Act and these rules, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of members present at the meeting and voting.
- (7) In accordance with section 203(2) of the Act, unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.
- (8) On a poll, votes may be given personally or by proxy.
- (9) In accordance with section 176(4a) of the Act, a person must not act as a proxy unless he or she is an active member of the co-operative.
- (10) A person must not act as a proxy for more than five (5) persons on any one occasion.
- (11) The instrument appointing a proxy must be of the form approved by the board but the instrument appointing a proxy shall not specify the manner in which a proxy is to vote in respect of a particular resolution.
- (12) The signed instrument appointing a proxy shall be deposited at the registered office of the co-operative not less than twenty four (24) hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

### **33. Postal ballot**

- (1) Voting must not be by facsimile or electronic means.
  - (2) The manner of voting shall be in accordance with the regulations.
  - (3) A special postal ballot or a postal ballot must be held -
    - (a) when required by the Act; or
    - (b) in accordance with section 197 of the Act, on the written requisition of the number of active members of the cooperative who together are able to cast at least 5% of the total number of votes able to be cast at a meeting of the co-operative; or
- (c) if approved by the members by ordinary resolution. [s. 187(2)]

### **34. Poll at general meetings**

- (1) If a poll (or ballot) is demanded by at least 5 members, it must be conducted in a manner specified by the person presiding and the result of the poll is the resolution of the meeting on that question.
- (2) A poll demanded for the election of a person presiding or on a question of adjournment must be taken immediately, but any other poll may be conducted at any time before the close of the meeting.

### **35. Special and ordinary resolutions**

- (1) A special resolution is a resolution which is passed in accordance with sections 187 and 188 of the Act -
  - (a) by a two-thirds majority at a general meeting of members; or

- (b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
  - (c) by a three-quarters majority in a special postal ballot of members.
- (2) An ordinary resolution is a resolution passed by a simple majority at a general meeting or in a postal ballot by members.
  - (3) A special resolution has effect from the date that it is passed unless it is required to be registered by the Commission under section 191(2) of the Act.

## **36. Board of directors**

- (1) There shall be a board of nine directors.
- (2) A director must be -
  - (a) a natural person; and
  - (b) not less than 18 years of age.

## **37. Qualifications of directors**

- (1) A person is not qualified to be a director unless he or she is a member of the co-operative or a representative of a body corporate which is a member of the co-operative (“member director”). [s.208(1)(a)]
- (2) A person must not act as a director if the person is disqualified under section 209 of the Act.

## **38. Retirement of directors**

- (1) At the first annual general meeting of the co-operative after these rules are in place all of the directors must retire and at the next annual general meeting 3 of the directors must retire and this pattern of rotation is to continue in ensuing years.
- (2) A retiring director retains office until the close of the meeting at which his or her successor is elected.
- (3) The directors to retire in any one year are, subject to the provisions as to the filling of casual vacancies, those that have been longest in office since their last election and if there are 3 or more directors who became directors on the same day, those who retire must be determined by lot unless they otherwise agree among themselves.
- (4) A retiring director is eligible for re-election.

## **39. Election of directors**

- (1) At least 6 weeks before an annual general meeting, the board must -
  - (a) notify all members of the number of directors retiring at the annual general meeting; and
  - (b) advise the members of -
    - (i) their eligibility to nominate as a director; and
    - (ii) the duties and responsibilities of a director; and
    - (iii) the anticipated remuneration (if any); and
    - (iv) the nomination and election procedures.
- (2) Not less than 6 weeks before the annual general meeting, a notice must be displayed at the registered office of the co-operative inviting nominations of candidates for election as directors.
- (3) A nomination must -
  - (a) be signed by 2 or more members; and
  - (b) provide details of the qualifications and experience of the person nominated; and

- (c) be accompanied by a notice in writing signed by the candidate agreeing to his or her nomination.
- (4) The nomination and the notice referred to in the sub-rule (3) must be lodged at the registered office of the co-operative at least 21 days before the annual general meeting.
- (5) Details of each person who has been nominated must be displayed at the registered office of the co-operative at least 21 days before the annual general meeting but upon the written request of a member of the Co-operative the details of each person who has been nominated shall be forwarded to the said member.
- (6) Details to be provided to members must include the candidate's -
  - (a) name; and
  - (b) age; and
  - (c) qualifications and experience; and
  - (d) length of any previous service as a director of the co-operative or with any other co-operative.

## **40. Manner of election**

- (1) The ballot for the election of directors must be conducted at the annual general meeting in the manner that the board directs.
- (2) If, at the annual general meeting at which an election of directors ought to take place, the place of any retiring directors is not filled, the meeting stands adjourned until the same day and time in the next week and at the same place unless another place is specified by a director or officer of the co-operative -
  - (a) at the time of the adjournment; or
  - (b) by written notice to members given before the day to which the meeting is adjourned.
- (3) At the resumption of the adjourned meeting nominations for any unfilled positions of director may be received and an election may be held.

## **41. Casual vacancy**

If there is a casual vacancy in the office of director under section 214 of the Act, the board may appoint a person to fill that vacancy but the person appointed must retire at the next annual general meeting.

## **42. Removal from the office of director**

The co-operative may by special resolution remove any director from office before the end of the director's period of office.

## **43. Remuneration**

In accordance with section 224 of the Act a director of a co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

## **44. Deputy directors**

- (1) In the absence of a director from a meeting of the board, the board may appoint a person to act as a deputy for that director.
- (2) A person appointed under sub-rule (1) must -
  - (a) be a member, if the absent director is a member;
  - (b) be a representative of a body corporate, if the absent director is a representative of that body corporate;
- (3) A person appointed as deputy may act in the place of the director for whom he or she is deputy.

- (4) The other members of the board may by majority vote remove a deputy director from office.
- (5) A deputy director vacates office -
  - (a) if the deputy director is removed from office under this rule; or
  - (b) if the director for whom he or she is deputy ceases to hold office; or
  - (c) if the deputy director dies; or
  - (d) if the deputy director resigns.
- (6) A deputy director while acting as a director is entitled to the same remuneration as that to which the director for whom he or she is deputy would have been entitled.

## **45. Proceedings of the board**

- (1) Meetings of the board are to be held as often as may be necessary for properly conducting the business of the co-operative and must in any case be held at least every three months. [s.210(1)]
- (2) Questions arising at any meeting shall be decided by a majority of votes.
- (3) In the case of an equality of votes, the chairperson has a second or casting vote.
- (4) A director may call a meeting of the board of directors by giving notice individually to every other director.
- (5) Except in special circumstances determined by the chairperson, at least 48 hours notice shall be given to the directors of all meetings of the board.
- (6) A director not present at a meeting of the board may be involved in any discussions of the board by telephone. The director shall have the right to express his views on issues discussed and shall have the right to vote on those issues. Any director so involved in board meeting shall be considered to be present at the meeting and form part of the quorum of directors present and voting.  
The minutes of any board meeting shall record that a director participated in a meeting by telephone. The minute taker shall record the time at which the director voted on any motions voted upon by the board.

## **46. Quorum for board meetings**

The quorum for a meeting of the board is 5. [s.210(4)]

## **47. Chairperson of board**

- (1) The chairperson of the board shall be elected by the board.
- (2) If the chairperson of the board is unable or unwilling to preside or is not present within 15 minutes after the time appointed for meetings of the board, the members present must select one of their number to preside.
- (3) The person selected under sub-rule (2) presides at the board meeting until the time that the chairperson attends and is willing to act.
- (4) The board may by ordinary resolution remove the chairperson from office.
- (5) A chairperson shall be elected at the first meeting of the board convened after the annual General Meeting of the co-operative.

## **48. Financial year**

The financial year of the co-operative ends on the 30 June.

## **49. Seal**

- (1) In accordance with section 249 of the Act, the co-operative must ensure that the name of the co-operative appears in legible characters on its common seal and official seals.
- (2) The common seal must be kept at the registered office of the co-operative in such custody as the board directs.
- (3) The co-operative must have, for use in place of its common seal outside the State where its common seal is kept, one or more official seals, each of which must be a facsimile of the common seal of the co-operative

with the addition on its face of the name of every place where it is to be used. [s. 49(1)]

- (4) The seal of the co-operative must not be affixed to any instrument except in accordance with a resolution of the board.
- (5) Two directors must be present when the common or official seal is affixed to an instrument by another person and must sign the instrument so sealed.
- (6) In accordance with section 49(2) of the Act, the persons affixing the official seal must certify in writing on the instrument to which it is affixed, the date and place at which it is affixed.

## **50. Custody and inspection of records**

A person is entitled to make a copy of entries in a register specified in section 241(1) of the Act -

- (a) if the copy is a photocopy or electronic copy, on payment of a fee of \$1 per page to a maximum of \$20; and
- (b) in any other case, free of charge.

## **51. Banking**

- (1) The board must ensure that -
  - (a) a banking account or accounts are kept in the name of the co-operative; and
  - (b) all money received by the co-operative is paid into that account or those accounts as soon as possible after it is received.
- (2) All cheques drawn on such accounts and all drafts, bills of exchange, promissory notes, and other negotiable instruments for and on behalf of the co-operative, must be signed by any 2 or more directors.

## 52. Safekeeping of securities

The co-operative must keep the securities of the co-operative safely in the manner and with the provision for their safety that the board directs.

## 53. Audit

- (1) The accounts of the co-operative must be audited in accordance with section 233 of the Act and the regulations made under that section.
- (2) Auditors must be appointed in accordance with the regulations under section 233 of the Act to audit the accounts of the co-operative.
- (3) Audits must be carried out annually.
- (4) There shall be an Internal Revision Committee comprising not more than five members of the co-operative who shall be elected at the Annual General Meeting of the co-operative.  
The Internal Revision Committee may upon the death or resignation of one of its elected members appoint a person to fill that vacancy subject to that person being nominated to the Board as a suitable replacement.  
The Board shall have 28 days in which to comment to the Committee on the nomination after which the Committee may confirm or otherwise the appointment.
- (5) The Internal Revision Committee shall have the power to inspect the books of the co-operative (for no charge) for not more than two weeks on one occasion nominated by the Internal Revision Committee each financial year, but shall not remove the books from the registered office of the co-operative or wherever else the co-operative may keep them and shall not have access to the books in priority to the accountant or the auditor of the co-operative who shall have priority in all respects.
- (6) The Internal Revision Committee may attend one meeting of the board each quarter of the financial year and may there address the board solely as to any inaccuracies or perceived inaccuracies in the books of the co-operative.
- (7) The Internal Revision Committee may address the Annual General Meeting solely as to any inaccuracies or perceived inaccuracies in the books of the co-operative.

- (8) The members of the Internal Revision Committee shall otherwise keep confidential the information contained in the books of the co-operative howsoever obtained.
- (9) The Internal Revision Committee shall not have any powers or privileges except those specified above.
- (10) The members of the Internal Revision Committee shall not be entitled to any fees or remuneration for their services as the members of the Internal Revision Committee.

## **54. Co-operative funds**

- (1) The board may resolve to retain all or any part of the surplus arising in any year from the business of the co-operative to be applied for the benefit of the co-operative.
- (2) Any part of the surplus arising in any year from the business of the co-operative or any part of the reserves may -
  - (a) be paid to a member by way of rebate based on the business done by the member with the co-operative; or
  - (b) be applied by the issue of bonus shares to a member; or
  - (c) be paid to a member by way of limited dividend (as defined in section 268(3) of the Act) on shares held.
- (3) The rebate, bonus shares or limited dividend -
  - (a) must be declared at the annual general meeting of the co-operative; and
  - (b) must not exceed the amount recommended by the board; and
  - (c) in the case of dividend must not exceed the amount permitted by the Act and regulations.
- (4) The amount of any rebate or dividend payable to a member under sub-rule (2) may, with the consent of the member, be applied -
  - (a) in payment for the issue to the member of bonus shares; or
  - (b) as a loan to the co-operative.

- (5) Any part of the surplus arising in any year from the business of the co-operative may be credited to any person who is not a member, but is qualified to be a member, by way of rebate in proportion to the business done by him or her with the co-operative, if -
  - (a) the person was a member at the time the business was done and the membership has lapsed; or
  - (b) the person has applied for membership after the business was done.
- (6) Nothing in sub-rule (5) precludes the payment of a bonus to an employee in accordance with the terms of his or her employment.
- (7) A part of the surplus, not exceeding 5% arising in any year from the business of the co-operative may be applied for one or both of the following -
  - (a) charitable purposes; or
  - (b) supporting any activity approved by the co-operative. [s. 267]
- (8) The board must give notice of any dividend, rebate or bonus share that has been declared by displaying it at the registered office of the co-operative and in any other manner the board determines.
- (9) Except where the Act or these rules specify otherwise interest does not accrue to a member on any dividend rebate or bonus share held by the co-operative for a member.

## **55. Provision for loss**

Subject to section 266 of the Act, the board may resolve to retain all or any part of the surplus arising from the business of the co-operative in any year to be applied to meet any loss on the transactions of the co-operative.

## **56. Winding up**

- (1) The winding up of the co-operative must be in accordance with Part 12 of the Act.

(2) If, on the winding up of the co-operative, any property remains after the satisfaction of all its debts and liabilities and the costs, expenses and charges of the winding up, that property shall be distributed amongst the members of the co-operative in the proportion of the respective number of shares held by them on the commencement of the winding up of the co-operative.