



**rules** of the  
**independent Liquor Group**  
Distribution Co-Operative Limited  
as at december 2008

A TRADING SHARE CO-OPERATIVE  
REGISTERED UNDER THE CO-OPERATIVES  
ACT 1992 (NEW SOUTH WALES)

Registry of Co-operatives  
154 Russell Street  
Bathurst NSW 2795

DX 3123 BATHURST  
(Code: T/S(PV): 24/6/98)

## DEFINITIONS

1. (a) In these rules, unless the context otherwise requires:
  - (i) "active member" means a member who is in active membership within the provisions of Rule 14;
  - (ii) "alter" or similar word or expression used in relation to a rule amendment includes add to, substitute, and rescind;
  - (iii) "auditor" means an auditor or auditors for the time being of the co-operative appointed in accordance with Rule 92;
  - (iv) "banking account" includes an account with a credit union or building Co-operative registered, or authorised to operate, under the Financial Institutions (NSW) Code into which the co-operative's monies may be paid;
  - (vi) "business day" means a day that is not a Saturday or Sunday or a public holiday or bank holiday in New South Wales;
  - (vii) "CCU" means Co-operative Capital Unit issued in accordance with these rules;
  - (v) "director" means any director of the co-operative for the time being;
  - (viii) "financial year" means the financial year of the co-operative as specified in Rule 89;
  - (ix) "may" or a similar word or expression used in relation to a power of the board indicates that the power may be exercised or not exercised at the board's discretion;
  - (x) "member" means a member of the co-operative;
  - (xi) "month" means calendar month;
  - (xii) "postal ballot" includes a special postal ballot;
  - (xiii) "prescribed" means prescribed by the Act or under the Act by Regulation;
  - (xiv) "provision" in relation to the Act, means words or other matter that form or forms part of the Act, and includes:
    - (a) a chapter, part, division, subdivision, section, subsection, paragraph, subparagraph, sub-subparagraph or schedule of or to the Act; and
    - (b) a section, clause, subclause, item, column, table or form of or in a schedule to the Act; and
    - (c) the long title and any preamble to the Act;
  - (xv) "regulation" means a regulation made under the Act, and any regulation that applies to a co-operative by way of a transitional regulation made under the Act;
  - (xvi) "relevant interest" has the same meaning as given in Schedule 2 of the Act;
  - (xvii) "rules" mean the registered rules of the co-operative as amended from time to time and reference to particular rules has a corresponding meaning;
  - (xviii) "shall" or a similar word or expression used in relation to a power of the board indicates that the power must be exercised, subject to the Act or the rule granting the power;
  - (xix) "special resolution" means a resolution which is passed in accordance with Rule 64;

- (xx) "the board" means the whole or any number of the directors assembled at a meeting of the directors or transacting business in accordance with Rule 75, being not less than a quorum or a majority, as the case may be;
- (xxi) "the Act" means the Co-operatives Act 1992;
- (xxii) "the co-operative" means *The Independent Liquor Group Distribution Co-operative Ltd*;
- (xxiii) "the Law" means the Corporations Law;
- (xxiv) "the Registrar" means the Registrar of Co-operatives or any person delegated the Registrar's functions;
- (xxv) "the secretary" means any person appointed by the board as secretary of the co-operative pursuant to Rule 88;
- (xxvi) "share" means share in the capital of the co-operative;
- (xxvii) "the State" means the State of New South Wales;
- (xxviii) "writing" includes printing, typing, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning;
- (xxix) Words importing one gender include the other genders;
- (xxx) Words importing persons include corporations;
- (xxxi) Words in the singular include the plural, and vice versa;
- (xxxii) Words or expressions used have the same meanings as those given to them by the Act.

#### DEFINITIONS - INTERPRETATION PROVISIONS

- (b) A reference in these rules to "the Act" includes a reference to:
  - (i) the Act as originally enacted, and as amended from time to time since its original enactment; and
  - (ii) if the Act has been repealed since the inclusion of the reference in these rules - the legislation enacted in substitution of the Act (whether legislation of the State or Federal Parliament) and as amended from time to time since its enactment;
- (c) A reference in these rules to a provision in "the Act" includes a reference to:
  - (i) the provision as originally enacted, and as amended from time to time since the original enactment;
  - (ii) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference - the provision as re-enacted and as amended from time to time since its re-enactment; and
  - (iii) if the provision has been omitted and replaced with a new provision dealing with the same area of law or procedure - the new provision as enacted and as amended from time to time since its enactment.
- (d)
  - (i) In the interpretation of a rule, or paragraph of a rule, the interpretation that will best achieve the purpose of the rule is to be preferred to any other interpretation.
  - (ii) This provision applies whether or not the purpose is expressly stated in the rule or paragraph of the rule.

- (e) In these rules, unless the context indicates a contrary intention, headings are for convenience and do not affect interpretation.

## RULES

2. (a) The rules of the co-operative have the effect of a contract under seal:
- (i) between the co-operative and each member;
  - (ii) between the co-operative and each director, the principal executive officer and the secretary of the co-operative; and
  - (iii) between a member and each other member;
- Under the contract, each of those persons agrees to observe and perform the provisions of the rules as in force for the time being so far as those provisions are applicable to that person.
- (b) (i) A person shall be entitled on demand to a copy of the rules upon payment of a sum not exceeding \$2.00, or such other amount as the board may from time to time determine.
- (ii) A person may inspect a *copy* of these rules free of charge at the office where the registers are kept, during all reasonable hours.

## TRADING CO-OPERATIVE

- 2A. The co-operative is a trading co-operative within the meaning of Section 14 of the Act.

## RULE ALTERATIONS

3. (a) The rules may be altered by a special resolution, by a resolution of the board in accordance with Section 112 of the Act or as otherwise permitted by the Act. No alteration to these rules takes effect until the alteration is registered by the Registrar.
- (b) Where any rule is altered, by way of a board resolution under Section 112, the co-operative must cause the alteration to be notified, in writing, to members as soon as practicable after the alteration is registered and, in any event, not later than the date on which notice is given to the members of the next annual general meeting of the co-operative, following the registration of the alteration.

## NAME

4. (a) The name of the co-operative shall be *The Independent Liquor Group Distribution Co-operative Ltd.*
- (b) The co-operative may, in accordance with Section 259, change its name by way of a special resolution to a name approved of by the Registrar.

## CHANGE OF REGISTERED OFFICE

5. The board shall notify the Registrar of any change of address of the registered office of the co-operative within 28 days after the change, and on the form approved by the Registrar.

## NOTIFICATION OF OFFICE ADDRESS AT WHICH REGISTERS ARE KEPT

- 5A. If the registers required by Section 249(1) to be kept by the co-operative are not kept at the registered office, the co-operative must lodge with the Registrar a notice of the address at which the register is kept within 28 days after the register is:

- (i) established at an office which is not the co-operative's registered office; or
- (ii) moved from one office to another.

## OBJECTS

6. The objects of the co-operative shall be:

### Primary Object

- (a) To distil, draw, blend, bottle, manufacture, brew, package and otherwise prepare for sale and deal in alcoholic and non-alcoholic beverages, cigarettes, tobacco, smoker's requisites, and such other merchandise as is usually transacted by wine and spirit merchants either by wholesale or retail sale

### Secondary Objects

- (b) To purchase or in any other manner acquire on behalf of and to supply to its members and other persons all alcoholic and non-alcoholic beverages of any nature from anywhere in the world.
- (c) To purchase, hire, lease or otherwise acquire all such equipment as may be required for the refining, blending manufacturing, filtering, bottling labelling and packing and distribution of alcoholic and non-alcoholic beverages for its members or other persons.
- (d) To purchase, hire, lease manufacture or acquire on behalf of any to supply to its members such equipment as may be required for the setting up of Wine and Spirit Merchants premises hotels or other licensed premises.
- (e) To purchase, hire, lease or enter into arrangements with other persons or companies for and on behalf of and to supply to its members transport and delivery, bottling and packaging of alcoholic and non-alcoholic beverages and all such other items sold stocked by the members
- (f) To purchase, hire, lease or otherwise acquire to use and control on behalf of its members such office equipment, including the use of a computer or computer time and to install such office systems as shall be used by the Co-operative and its members or on their behalf or for their benefit.
- (g) To provide cold storage for the products of its members or other persons.
- (h) To acquire and distribute information as to the markets of the world and as to Co-operative trading in general.
- (i) To purchase or otherwise acquire goods and sell products on behalf of its members or persons;
- (j) To arrange insurance on behalf of its members or other persons;
- (k) To do all such things calculated to promote the economic interest of the members of the Co-operative in relation to the objects mentioned in this clause as may be prescribed by regulation under the Act.
- (l) To contract or otherwise make arrangements for any guarantee or guarantees by any person or persons of the payment of money by the Co-operative or of the performance by the Co-operative of any of its obligations whether present or future and for such purposes to indemnify or agree to indemnify the person or persons giving or about to give such guarantee or guarantees and to give security over the assets of the Co-operative or any of them, for such indemnity or for the performance of such agreement to indemnify.
- (m) To establish agencies in the State and elsewhere for any objects of the Co-operative.
- (n) Subject to the provisions of the Liquor Act 1982, to assist members in acquiring approved amusement device or approved amusement devices as defined in Liquor Act 1982 and to hold or have an interest in any licence necessary therefore".
- (o) All such other objects as shall be permitted by the Co-operatives Act, 1992 and all amendments thereof, permits.
- (p) To purchase, hire, lease or otherwise acquire any retail liquor business and related liquor licence for the benefit of its members as a whole.

## POWERS

- 7. (a) The co-operative shall have, both within and outside the State, the legal capacity of a natural person and have all the powers allowed by or under the Act, including but not limited to the taking of deposits pursuant to Section 263A of the Act.
- (b) The powers of the co-operative to:

- (i) obtain financial accommodation; and
- (ii) give security for the repayment of money,

shall be exercised subject to the Act, but otherwise unlimited by the rules.

#### **POWER TO FORM COMPANIES, ENTER JOINT VENTURES ETC**

8. Without limiting the provisions of Rule 7, and subject to the provisions of the Law, the co-operative has power;
- (i) to form or participate in the formation of a body corporate or unit trust;
  - (ii) to acquire interests in and sell or otherwise dispose of interests in bodies corporate, unit trusts and joint ventures; and
  - (iii) to form or enter into a partnership, joint venture or other association with other persons or bodies,

in furtherance of the co-operative's primary activity.

#### **LOANS BY MEMBERS TO THE CO-OPERATIVE**

9. (a) The co-operative may, in accordance with Section 268 of the Act, require its members to lend money to the co-operative, with or without security, in accordance with a proposal approved by the members by special resolution.
- (b) The approved proposal shall be binding on all members at the date of the passing of the special resolution other than a member who has given notice of their intention to cease active membership in accordance with Section 268(3)(c) and on all persons who become members of the co-operative after that date and before the total amount of the loan to be raised has been raised.

#### **DEALINGS OF MEMBERS WITH CO-OPERATIVE**

10. (a) The co-operative may, in accordance with Section 78 of the Act, make a contract with a member requiring the member to have specified dealings with the co-operative for a fixed period.
- (b) The provisions of the contract may require a member:
- (i) to sell products through or to the co-operative; or
  - (ii) to obtain supplies or services through or from the co-operative; or
  - (iii) to pay to the co-operative specified sums as liquidated damages for any failure to comply with a requirement authorised by this rule.
- (c) The sum, if any, specified as liquidated damages is to be considered as a debt due to the co-operative and in respect of such debt, the co-operative has, pursuant to Section 80 of the Act, a charge on each of the following :
- (i) the share or interest in the capital and the credit balance and deposits of the member or past member;
  - (ii) any dividend, interest, bonus or rebate payable to the member or past member;
  - (iii) any entry and periodic fees required to be repaid to a member when the member ceases to be a member.

The charge created pursuant to Section 80 of the Act shall be enforced in accordance with that section.

- (d) Nothing in this rule shall be interpreted as restricting the powers of the co-operative to enter into contracts with a member or members other than pursuant to the provisions of this rule.

#### SEAL

- 11. (a) The co-operative shall, as required by Section 258(1)(a) of the Act, have the name of the co-operative appear in legible characters on its Common Seal and on any Official Seal and the Australian Registered Body Number of the Co-operative, if required under the Law. The Common Seal shall be kept at the registered office in such custody as the board shall direct.
- (b) The co-operative may, pursuant to Section 49 of the Act, have for use in place of its Common Seal outside the State, one or more Official Seals. Each of the additional seals must be a facsimile of the Common Seal with the addition on its face of the name of the place where it is to be used.
- (c) The Common Seal of the co-operative shall not be affixed to any instrument except by resolution of the board. Two directors and the secretary must be present and must sign all instruments sealed while they are present. The board may appoint a person other than the secretary to perform this function.
- (d) The person 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.

#### CO-OPERATIVE MAY AUTHORISE AGENT OR ATTORNEY TO EXECUTE DEEDS

- 12. (i) The co-operative may, by writing under its Common Seal, empower its agent or attorney (either generally or in respect of a specified matter or specified matters) to execute deeds on its behalf.
- (ii) A deed signed by such an agent or attorney on behalf of the co-operative and under the agent's or attorney's seal, or under the appropriate official seal of the co-operative, binds the co-operative and has effect as if it were under the Common Seal of the co-operative.
- (iii) The authority of such an agent or attorney, as between the co-operative and a person dealing with the agent or attorney, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of the agent's or attorney's authority has been given to the person dealing with the agent or attorney.
- (iv) Where an agent or attorney affixes an Official Seal to an instrument, the person must comply with Rule 11(d).

#### CUSTODY AND INSPECTION OF RECORDS AND REGISTERS

- 13. (a) The co-operative must have at the office where the registers are kept and available during all reasonable hours for inspection by *any member* free of charge the following:
  - (i) a copy of the Act and the regulations;
  - (ii) a copy of the rules of the co-operative;
  - (iii) a copy of the minutes of each general meeting of the co-operative;
  - (iv) a copy of the last annual report of the co-operative under section 252;
  - (v) the register of directors, members and shares;

- (vi) the register of names of persons who have given loans or deposits to or hold securities or debentures given or issued by the co-operative;
  - (vii) such other registers as the regulation provides are to be open for inspection under this section
- (b) A member is entitled to make a copy of entries in a register specified in subsection (a) and to do so free of charge unless the rules of the co-operative require a fee to be paid, in which case on payment of the required fee.
- (c) The co-operative must have at the place where the registers are kept and available during all reasonable hours for inspection by *any person*:
- (i) a copy of the Act and the Regulation;
  - (ii) a copy of the rules of the co-operative;
  - (iii) a copy of the last annual report of the co-operative under section 252 of the Act.

#### ACTIVE MEMBERSHIP PROVISIONS

14. In accordance with Part 6 of the Act:

- (a) To distill, draw, blend, bottle, manufacture, brew, package and otherwise prepare for sale and deal in alcoholic and non-alcoholic beverages, cigarettes, tobacco, smoker's requisites, and such other merchandise as is usually transacted by wine and spirit merchants is a primary activity of the co-operative; and either
- (b) a member shall:
  - i) be engaged in the purchase, manufacture, distillation, blending, producing, distribution or sale of alcoholic beverages or non-alcoholic beverages and shall have an interest in a license in a State or Territory of Australia under the provisions of the relevant Liquor Act of that State or Territory under the provisions of such Act shall be entitled to sell alcoholic beverages of any description; and
  - ii) hold not less than two hundred and fifty (250) shares in the Co-operative; and
  - iii) purchase not less than \$5,000 from the Co-operative during the previous twelve calendar months; and
  - iv) submit to the Board a statutory declaration giving details of all parties with an interest in the license referred to in sub- clause (i) above; and
  - v) be a user of a trade mark or trade name owned by the Co-operative and a signatory to a user agreement within the area of Australia who pays an annual amount as prescribed by the user agreement being not less than \$2500.00; and
  - vi) Pay an annual subscription fee of \$660.00 per financial year or such other amount that shall be determined by the board but not exceeding an amount referred to in Rule14A;

in order to establish active membership of the co-operative.

#### ANNUAL SUBSCRIPTION

14A Members of all share classes may be required to pay an annual subscription which shall:-

- (i) be in addition to any other charges payable under the rules;
- (ii) be determined by the board at a general meeting from time to time;
- (iii) be payable, in advance, within the period set by the board; and
- (iv) be \$660.00 or such other amount not exceeding \$1200.00 in any financial year.

- (b) Notwithstanding paragraph (a)(iii) the Board may, either generally or in a specific case, extend a period for the payment of the Annual Subscription, even though the previous period has expired. The extended period for payment shall not exceed 2 months.
- (c) Members who do not pay the annual subscription determined under this rule within the period set by the board, or within any extended period which may be granted by the board, may have their shares forfeited by resolution of the board in accordance with Rule 24A.
- (d) For the purposes of this rule, the term "within", in relation to a period set by the board, means at any time at all before the end of the period.

#### MEMBERS BUYING RIGHTS

14B

- (a) Definitions
  - (i) Exclusive brands means certain liquor, tobacco and related products identified as "exclusive brands" on the Co-operative website [www.ilg.com.au](http://www.ilg.com.au) from time to time.
  - (ii) Co-operative member or member means; An active member of the co-operative in accordance with clause 14 of the rules;
  - (iii) Competitive buying group means a buying or promotion group (also known as a banner group) where that group is not a group managed or controlled by the co-operative, or a banner group that is externally controlled or privately owned.
- (b) Without limiting the rights of members to purchase liquor, tobacco and related products from the co-operative, co-operative members shall have the right to purchase exclusive brands where:
  - (i) The member is trading in accordance with the co-operative trading terms as published from time to time; and
  - (ii) The member is not a member of or a participant in a competitive buying group.

#### FORFEITURES AND CANCELLATIONS RELATING TO INACTIVE MEMBERS

- 15. (a) The board shall, after giving notice in accordance with Section 132 of the Act, declare the membership of a member cancelled if:
  - (i) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of no more than 3 years before the date of cancellation; or
  - (ii) the member is not presently an active member and has not been an active member at any time during the past 3 immediately before the date of cancellation.
- (b) The board is to declare the shares of a member forfeited at the same time as the membership is cancelled and the amounts due in respect of that cancellation and forfeiture shall be dealt with and repaid in accordance with Sections 134 - 136 (inclusive) of the Act.
- (c) The co-operative shall, in a form approved of by the Registrar, keep a register of memberships cancelled pursuant to paragraph (a) of this Rule, which shall specify the particulars prescribed in Clause 6 of Schedule 1 of the Co-operatives Regulation 1997.
- (d) The board shall not be required to give notice, under this rule, if the member's whereabouts are unknown to the co-operative and the amount required to be repaid to the member in respect of the cancelled membership (whether by reason of the cancellation of share or otherwise) does not exceed \$50, or such other amount as may be prescribed.

**QUALIFICATIONS FOR MEMBERSHIP**

16. A person is not qualified to be admitted to membership of the co-operative unless the board has reasonable grounds for believing that the person will be an active member under Rule 14.

**APPLICANTS FOR MEMBERSHIP TO BE GIVEN NOTICE OF ENTRY AND PERIODIC FEES**

17. The co-operative must supply, with each application for membership, a written notice of any intending or prescribed entry or periodic fees that a person will be liable to pay on becoming a member of the co-operative.

**APPLICATION FOR MEMBERSHIP AND SHARES**

18. (a) The board of a co-operative must provide each person intending to become a member of the co-operative with:
- (i) a disclosure statement which sets out:
    - the rights and liabilities attaching to shares;
    - a copy of the last annual report of the co-operative, prepared as required under section 252;
    - any other relevant information concerning the financial position and prospects of the co-operative if there has been a significant change since the date of the last annual report;
  - (ii) a consolidated copy of the rules of the co-operative; and
  - (iii) a copy of all special resolutions applicable to the member passed by the members of the co-operative, except special resolutions providing for an alteration of the rules of the co-operative; and
- (b) Applications for membership, shares or bonus or additional shares shall be lodged at the registered office, in or to the effect of the form approved by the board, together with the amount required to pay the shares fully.
- (c) Every application shall be considered by the board. If the board approves of the application, the board shall allot the shares applied for. The applicant's name together with the number of shares allotted, date of allotment and any other information required by or under the Act shall be entered in the register of members. The applicant shall be notified in writing of the allotment and of the entry in the register and shall then be entitled to the privileges attaching to membership, or to the holding of shares, or bonus or additional shares, as is appropriate to the case.
- (d) The board may, at its discretion, refuse any application for membership or shares, other than additional shares the subject of a compulsory issue under Rule 27, and need assign no reasons for such refusal though the board may choose to give reasons, if the board considers it appropriate to do so. Upon refusal the applicant's deposit shall be refunded without interest.
- (e) In considering an application for membership pursuant to this rule, the board must ensure that a person who is not qualified for membership of the co-operative under Rule 16 is not admitted as a member.

**MEMBERS OF THE CO-OPERATIVE**

19. The members of the co-operative are:
- (a) those persons who signed the application for registration of the co-operative; and
  - (b) those persons admitted to membership in accordance with Rule 18; and

- (c) those persons who become members by:
  - (i) a transfer of engagements to the co-operative; or
  - (ii) a scheme of arrangement; or
  - (iii) operation of law; or
  - (iv) a transfer of shares under Rule 43.

#### **CAPITAL AND SHARES**

- 20. (a) The capital of the co-operative shall be raised by the issue of shares which shall be of one class, all ranking equally, and be of nominal value of \$ 1.00 each.
- (b) The capital shall vary in amount according to the nominal value of shares from time to time subscribed.
- (c) No share is to be allotted (other than a bonus share) unless at least 10% of the nominal value of the share has been paid. A share is not to be issued at a discount.
- (d) No member shall hold, or have a relevant interest in, more than 20% of the nominal value of issued share capital of the co-operative, except in accordance with Section 289 of the Act.
- (e) Shares of the co-operative shall not be quoted for sale or purchase at any stock exchange or in any other public manner whatever, within the meaning of the Income Tax Assessment Act 1936 (Cwlth).

#### **ABROGATION OR VARIATION OF SHARE RIGHTS**

- 21. (a) Where the co-operative's share capital is divided into different classes, and rights are attached to shares included in a class of shares, the co-operative may, if passed by resolution of a simple majority at a meeting of members who hold shares of that class, vary or abrogate those rights.
- (b) If, after the passing of the resolution referred to in Rule 21(a), the co-operative wishes to alter its rules to vary or abrogate the rights attached to that particular class of shares, it may give notice to members of the intention to propose a special resolution to that effect.
- (c) Where a special resolution is passed in accordance with this rule, the co-operative may on registration of the special resolution vary or abrogate the rights attached to the share class the subject of the special resolution.

#### **MINIMUM SHAREHOLDING**

- 22. Every member shall, on admission to membership of the co-operative, hold at least **250** shares.

#### **SHARES TO BE FORFEITED TO REMEDY CONTRAVENTION OF MAXIMUM LEVEL OF SHARE INTEREST**

- 23. (a) Where a person (whether or not a member of the co-operative) contravenes Rule 20 (d), the board shall declare to be forfeited sufficient number of the shares in which the person has a relevant interest to remedy the contravention.
- (b) The shares to be forfeited pursuant to this rule are:
  - (i) the shares nominated by the person for the purpose; or
  - (ii) in the absence of such nomination - the shares in which the person has had a relevant interest for the shortest time.

- (c) A declaration of the board that shares are forfeited operates to forfeit the shares concerned.
- (d) The provisions of Sections 134 - 136 (inclusive) of the Act shall apply to and in respect of shares forfeited under this rule as if the shares had been forfeited under Rule 15.

#### **NOTICE TO BE GIVEN OF SUBSTANTIAL SHARE INTEREST AND SUBSTANTIAL CHANGE IN SHARE INTEREST**

- 24.
- (a) A person must give notice in writing to the co-operative within 5 business days after becoming aware that the person has a substantial share interest in the co-operative.
  - (b) A person who has a substantial share interest in the co-operative must give notice in writing to the co-operative within 5 business days after becoming aware that a substantial change has occurred in that interest.
  - (c) A person who has ceased to have a substantial share interest in the co-operative must give notice in writing to the co-operative within 5 business days after becoming aware that the person has ceased to have that interest.
  - (d) For the purposes of this rule:
    - (i) A person has a substantial share interest in the co-operative if the nominal value of the shares in which the person has a relevant interest represents 5% or more of the nominal value of the issued share capital of the co-operative.
    - (ii) A substantial change takes place in a person's share interest in the co-operative if there is an increase or decrease in the number of shares in which the person has a relevant interest and the increase or decrease represents at least 1% of the nominal value of the issued share capital of the co-operative.
    - (iii) "Notice" means a notice in the form approved by the Registrar, specifying the particulars prescribed by the Co-operatives Regulation 1997.

#### **FORFEITURE FOR NON – PAYMENT OF SUBSCRIPTION**

- 24A
- (a) The shares of a member whose subscription under Rule 14A has not been paid may be forfeited by resolution of the board.
  - (b) Written notice of the proposed forfeiture shall be forwarded to the member not less than 14 days before the date of the board meeting at which the resolution for forfeiture of the shares is to be moved, and the member shall be given an opportunity of being heard at the meeting.
  - (c) Rule 24A applies to the forfeiture, but the amount of the subscription for non payment of which the shares are forfeited is not to be deducted from the amount to be paid.
  - (c) Payment to the member of any amount due under this rule shall be made at such time as shall be determined by the board at its discretion, but not later than 12 months from the date of forfeiture.

#### **REGISTER OF NOTIFIABLE INTERESTS**

- 25.
- (a) The co-operative is to keep a register of notifiable interests, which is to be entered in alphabetical order, of the names of persons from whom the co-operative has received a notification under Rules 24 and 32 together with the information contained in the notification.
  - (b) The register kept for the purpose of this rule shall be open for inspection:
    - (i) by any member, free of charge; and

- (ii) by any other person on the payment of a fee of \$25.00

#### **BONUS SHARES**

- 26. (a) Bonus shares may be issued by the co-operative in accordance with the Act and these rules.
- (b) The total value of bonus shares issued by the co-operative under Section 156 during any 12 month period shall not exceed 20%, or such other percentage as may be prescribed, of the nominal value of the issued share capital of the co-operative, immediately before the date of issue of the bonus shares.

#### **COMPULSORY SHARE ACQUISITION**

- 27. (a) The board may require a member to take up, or subscribe for, additional shares in accordance with a proposal approved by a special resolution of the co-operative in accordance with Section 155 of the Act.
- (b) A proposal approved by the members shall be binding:
  - (i) on all members at the date of the passing of the special resolution other than a member who has given a notice of their intention to cease active membership in accordance with section 155(3)(c);
  - (ii) on all persons who become members after the passing of the special resolution, and before the total number of shares to be issued (as per the proposal) has been issued.

#### **PURCHASE OF MEMBERS' SHARES**

- 28. Subject to Section 172 of the Act the co-operative may:
  - (a) (i) purchase any share of a member at the request of the member; and
  - (ii) repay to a member, with the member's consent, the whole or any part of the amount paid up on any share held by the member when the sum repaid is not required for the activities of the co-operative.
  - (b) The co-operative shall cancel any share purchased or repaid in full by the co-operative.
  - (c) The co-operative shall not, in any financial year, repurchase shares or repay the amount paid up on shares, or both, if the amount to be paid by the co-operative exceeds the sum of:
    - (i) 5% of the nominal value of the issued share capital of the co-operative immediately before the commencement of that financial year; and
    - (ii) the amount of any additional share capital of the co-operative subscribed for during that year,
 unless exempted by written order of the Co-operatives Council, either unconditionally or subject to conditions.
  - (d) The amount paid for a share when it is repurchased may be an amount determined by the board which is less than the nominal value of the share if
 

the books of the co-operative disclose that the amount paid is the net shareholder's equity per share in the undertaking of the co-operative.
  - (e) Section 172 of the Act does not apply to any member who has been expelled or had his/her membership cancelled under Part 6 of the Act.

- (f) The board must not agree to repurchase shares or repay amounts paid up on shares if:
  - (i) the repurchase or repayment is likely to cause the co-operative to become insolvent, or
  - (ii) the co-operative is insolvent.
- (g) If the board is of the opinion that to pay the repurchase price would adversely affect the financial position of the co-operative it can:
  - (i) if it is a deposit-taking co-operative, apply the amount as an interest bearing deposit by the member with the co-operative, or
  - (ii) allot or issue debentures or CCUs of the co-operative to the member in satisfaction of the amount.
- (h) A deposit, debenture, or CCU issued pursuant to (g) shall:
  - (i) bear interest during any period in accordance with s173 of the Act; and
  - (ii) be repaid to the member as soon as, in the board's opinion, such repayment would not adversely affect the financial position of the co-operative, and in any case within 10 years.

#### LIABILITY OF MEMBERS TO THE CO-OPERATIVE

- 29. (a) A member shall, in accordance with Section 76 of the Act, be liable to the co-operative for the amount, if any, unpaid on the shares held by that member, together with any charges, including entry and periodic fees, payable by the member to the co-operative as required by these rules.
- (b) On the death of a member, the member's estate is subject to the same liability as the member would have been until the member's personal representative or some other person is registered in the member's place.
- (c) The joint holders of a share shall be jointly and severally liable in respect of any such amount unpaid on shares and to any such charges referred to in paragraph (a).

#### ONE MEMBER ONE VOTE

- 30. (a) An active member of the co-operative shall have one vote only in respect of any question or motion arising at a general meeting of the co-operative.
- (b) A member's right to vote is a personal right and is not attached to, or conferred by, any share held by the member in the co-operative.
- (c) In the case of joint membership, the joint members shall have 1 vote only between them and that vote may only be exercised (subject to the grant of any proxy in accordance with Rule 33 or power of attorney) by the joint member whose name appears first in the register of members.

#### EFFECT OF RELEVANT SHARE AND VOTING INTEREST ON VOTING RIGHTS.

- 31. (a) A member is not entitled to vote if another person (whether or not a member of the co-operative) has a relevant interest in any share held by the member or in the right to vote of the member.
- (b) A member who is not entitled to vote because of this rule may apply to the Co-operatives Council for a review of the matter.

- (c) Where the Co-operatives Council orders that the member is entitled to vote, the member's right to vote shall be restored.

#### NOTICE TO BE GIVEN OF VOTING INTEREST

32. (a) A person (whether or not a member of the co-operative) must give notice in writing to the co-operative within 5 business days of becoming aware that the person has, or has ceased to have, a relevant interest in the right to vote of a member in the co-operative.
- (b) For the purposes of this rule, "notice" means a notice which contains the prescribed particulars as set out in Clause 24 of the Co-operatives Regulation 1997.

#### PROXY VOTES

33. Deleted

#### INSTRUMENT APPOINTING PROXY TO BE LODGED AT REGISTERED OFFICE

34. Deleted

#### REVOCAION OF INSTRUMENT APPOINTING PROXY

35. Deleted

#### RESTRICTION ON VOTING ENTITLEMENT UNDER POWER OF ATTORNEY

36. Deleted

#### CERTIFICATE OF SHARES

37. (a) Every person whose name is entered as a member in the register of members shall be given, after application and without payment, a certificate under the seal of the co-operative specifying the shares held by the person and the amount paid up on those shares.
- (b) Where shares are held jointly by several persons the co-operative shall not be bound to issue more than one certificate, and delivery of a certificate to one of the joint holders shall be sufficient delivery to all.
- (c) If a share certificate is defaced, lost or destroyed a duplicate may be issued by the co-operative on payment of a fee, not exceeding \$10.00, and on such terms as to evidence and indemnity as the board thinks fit.

#### CALLS ON SHARES

38. (a) The board may from time to time make calls upon the members in respect of any monies unpaid on the shares of members (whether on account of the nominal value of the shares or by way of premiums) which are not required by the terms of issue to be paid at fixed times. A call is not valid unless the board gives at least 14 days notice to the members, specifying the time or times of payment. No call shall exceed one-fourth (1/4) of the nominal value of the shares or be payable at less than one month from the last call.
- (b) Each member, on receiving notice under this rule, shall pay to the co-operative at the time or times so specified the amount called on the member's shares.

- (c) The joint holders of a share shall be jointly and severally liable to pay all calls in respect of that share.
- (d) If a sum called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest upon the sum at the rate of 8% per annum from the day appointed for the payment to the time of actual payment. The board may waive payment of that interest wholly or in part.
- (e) The board may, on the issue of shares, differentiate between the shareholders in the amount of calls to be made and in the times of payment.
- (f) The directors may revoke or postpone a call.
- (g) The board may accept from any member willing to advance, all or any part of the money uncalled and unpaid upon any shares held by that member. Upon all or any of the money advanced, the board may pay interest to cover the time between the advancement and the time that the money would otherwise have been payable on the shares. The rate of interest can be agreed between the member and the board.

#### **DEFAULT IN PAYMENT OF CALLS**

- 39. (a) If a member fails to pay any call or instalment of a call by the day appointed for payment, the board may, while any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of the unpaid amount together with any interest which may have accrued.
- (b) The notice shall name a further day (not earlier than 14 days from the date of the notice) by which the payment required by the notice is to be made. The notice shall also state that if there is no payment by that time the shares for which the call was made may be forfeited.
- (c) If the requirements of the notice are not complied with by the member, then any share for which the notice has been given, may at any time afterwards (but before the payment required by the notice has been made), be forfeited by a resolution of the board.

#### **NON PAYMENT OF SUBSCRIPTION DEEMED TO BE A CALL**

- 40. (a) Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these rules be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable.
- (b) In the case of non-payment, the provisions of Rules 38 and 39 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.

#### **FORFEITED SHARES**

- 41. (a) A person whose shares have been forfeited pursuant to these rules shall cease to be a member in respect of the forfeited shares. However, that person shall remain liable to pay to the co-operative all moneys which (as at the date of forfeiture) were payable by the person to the co-operative in respect of the shares, in addition to the calls in default.
- (b) A statutory declaration in writing by a director of the co-operative stating that a share in the co-operative has been forfeited on a date stated in the declaration, shall be conclusive evidence of that fact as against all persons claiming to be entitled to the share.
- (c) The co-operative shall, pursuant to Section 80 of the Act have a charge upon the paid up amounts of the forfeited shares and may appropriate those amounts pursuant to that section.

**SALE OF SHARES BY BOARD**

- 42. (a) The co-operative may sell in such manner as the directors think fit all or any shares on which the co-operative has a charge, pursuant to Section 80 of the Act. However, no sale shall be made unless a sum in respect of which the charge exists is payable at the date of the sale. Also no sale shall be made until the expiration of 14 days after a notice in writing (stating, and demanding payment of, such part of the amount in respect of which the charge exists as is payable at the date when the notice is given) has been given to the registered holder of the share or the person entitled to it by reason of death or bankruptcy. The notice shall indicate that upon failure to make payment of the sum demanded within the time stipulated the shares will be sold by the board.
- (b) Where the highest offer received by the board is less than the amount paid up on shares to be sold, the board shall, before accepting the offer, notify the member of the receipt of such offer and the amount of the offer, and of the board's intention to accept the offer at the expiration of 14 days, if no payment is made before then to the co-operative of all moneys in respect of which the charge exists.
- (c) From the proceeds of any such sale the co-operative may deduct the expenses, if any, associated with the sale and may apply the balance to reduce the liability of the member. However, if a surplus remains after such deduction the surplus shall be payable to the member whose shares were sold.
- (d) For giving effect to any such sale the board may authorise a person to transfer the shares sold to the purchaser.

**TRANSFER AND TRANSMISSION OF SHARES**

- 43. (a) The instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members.
- (b) Shares shall be transferred in the following form or in a usual or common form which the board shall approve:

I, A.B. of .....

in consideration of the sum of \$.....

paid to me by C.D., of .....

("the transferee") do transfer to the

transferee the share (or shares) numbered .....

.....

in the .....

to hold on behalf of the transferee, the transferee's heirs, executors, administrators and assigns, subject to the conditions on which I hold the same at the time of the execution of this transfer.

I, the transferee, agree to take the said share (or shares) subject to the conditions on which the transferor holds the share (or shares) and subject to the rules of:.....

as amended from time to time.

As witness our hands, the ..... day of ..... 20.....

Signed by

....., transferor.

In the presence of ....., witness.

Signed by

....., transferee.

In the presence of ....., witness.

- (c) A share may not be sold or transferred except :
- (i) with the consent of the board, and to a person who is qualified to be admitted to membership of the co-operative under Rules 14 and 16; or
  - (ii) as otherwise provided by these rules or the Act.
- (d) The board may decline to register any transfer of shares to a person not qualified to be a member under Rule 16 or of whom they do not approve. The board may also decline to register any transfer of shares on which the co-operative has a lien or charge. If the board refuses to register a transfer of shares it shall send notice of the refusal to the transferee within 2 weeks after the date on which the board declined to register the transfer.
- (e) The board of the co-operative shall not consent to the sale or transfer of shares to a person in contravention of Rule 20(d).
- (f) The board may decline to recognise any instrument of transfer unless:
- (i) a fee of **\$1.00** is paid to the co-operative for the transfer; and
  - (ii) 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.
- (g) The board shall have a record of all transfers made in the proper books of the co-operative.
- (h) The board may suspend the registration of transfers during the 14 days immediately preceding the annual general meeting in each year.

#### **EFFECT OF SALE, TRANSFER OR DISPOSAL OF SHARES**

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

#### **DEATH OF MEMBER**

45. (a) The board may register as the holder of a share, a trustee executor or administrator of the estate of a dead person who was the registered holder of the share in the co-operative, or where the deceased member is entitled in equity to a share, with the consent of the holder of the share.
- (b) (i) On the death of a member, the member's share in the co-operative cannot be transferred to a person other than an administrator or executor except with the consent of the board of the co-operative;
- (ii) The board may only give its consent under Rule 45(b)(i) if there are reasonable grounds for believing that the person will be an active member of the co-operative.

**REGISTRATION OF OFFICIAL TRUSTEE IN BANKRUPTCY**

46. (a) Where a member is declared bankrupt, the Official Trustee in Bankruptcy may be registered as the holder of the share held by the bankrupt member.
- (b) The board may register the Official Trustee in Bankruptcy as the holder of a share in which a bankrupt member has an entitlement in equity, with the consent of the holder of the share.

**REGISTRATION AS ADMINISTRATOR OF ESTATE ON INCAPACITY OF MEMBER**

47. A person appointed under a law of a State or Territory to administer the estate of another person who, through mental or physical infirmity, is incapable of managing their affairs, may be registered as the holder of a share held by the incapable person whose estate the appointed person is administering.

**ENTITLEMENTS AND LIABILITIES OF PERSON REGISTERED AS TRUSTEE, ADMINISTRATOR ETC**

48. (a) A person who is entitled to a share by reason of the death, bankruptcy or the incapacity of the holder shall be entitled to the dividends and other advantages to which that person would be entitled if the person were the registered holder of the share. However, before being registered as a member in respect of the share, the person shall not be entitled to exercise any right conferred by membership in relation to meetings of the co-operative.
- (b) A person registered pursuant to Rules 45, 46 and 47 is, while so registered, subject to the same liabilities in respect of the share as those to which that person would have been subject if the share had remained, or had been registered in the name of the deceased person, the incapable person or the bankrupt person.

**EXPULSION OF MEMBERS**

49. (a) A member may be expelled from the co-operative by special resolution to the effect:
- (i) that the member has failed to discharge the member's obligations to the co-operative, whether prescribed by these rules or arising out of any contract; or
- (ii) that the member has been guilty of conduct detrimental to the co-operative.
- (b) In either case written notice of the proposed resolution shall be forwarded to the member not less than 14 days before the date of the meeting at which the special resolution is to be moved, and the member shall be given a reasonable opportunity of being heard at the meeting.
- (c) The shares of any member expelled shall be cancelled as at the date of expulsion and the cancellation shall be noted in the register of shares.
- (d) Expulsion of a member shall not be effective, until the special resolution expelling the member is registered.

**REPAYMENT OF EXPELLED MEMBERS' SHARE CAPITAL**

50. (a) Subject to paragraph (b) of this rule, the co-operative shall pay to the expelled member, the amount of capital paid up on the member's shares at the time of expulsion (less any amount owing by the member to the co-operative).
- (b) For the purposes of this rule "deficiency" shall mean the amount of accumulated loss or deficiency disclosed in the last preceding balance sheet of the co-operative. Where such a deficiency exists an appropriate proportion of the loss or deficiency must be deducted

from the amount of capital paid up on the shares of the expelled member. This shall be done having regard to the number of such shares in relation to the number of shares in the co-operative.

- (c) Payment to the expelled member shall be made at such time as shall be determined by the board in its discretion but not later than twelve (12) months from the date of expulsion.
- (d) An expelled member shall not be re-admitted as a member unless such re-admission is approved by special resolution. A member so re-admitted shall not have the shares restored which were cancelled on the member's expulsion.

#### **CEASING MEMBERSHIP**

51. A person shall cease to be a member in any of the following circumstances :

- (a) if the member's membership is cancelled under Rule 15;
- (b) if the member is expelled in accordance with Rule 49;
- (c) if the member becomes bankrupt or becomes subject to control under the law relating to bankruptcy.
- (d) on death of the member;
- (e) if the contract of membership is rescinded on the ground of misrepresentation or mistake;
- (f) if the member's share is transferred to another person and the transferee is registered as the holder of the share in accordance with these Rules;
- (g) if the member's share is forfeited in accordance with the provisions of the Act or the provisions of these rules, other than a forfeiture to remedy a contravention of Rule 20 (d);
- (h) if the member's share is purchased by the co-operative in accordance with Rule 28; and
- (i) if the amount paid up on the member's share is repaid to the member in accordance with the provisions of these rules.

#### **ANNUAL GENERAL MEETINGS**

- 52. (a) The first annual general meeting of a co-operative must be held at any time within 19 months or such other period as is permitted under the Act after the incorporation of the co-operative.
- (b) A general meeting of the co-operative to be known as the "annual general meeting" shall, as provided in Section 198 of the Act, be held each year on a date and a time determined by the board as long as it is within five (5) months after the close of the financial year of the co-operative, or within such further time as may be allowed by the Registrar.
- (c) All general meetings of the co-operative other than the annual general meeting shall be special general meetings, and shall be held at such place as the board nominates.
- (d) If an annual general meeting is not held in accordance with paragraph (a) of this rule, the members may, in accordance with Section 202 of the Act and Rule 54, requisition such a meeting.

#### **CONVENING GENERAL MEETINGS**

53. The board may, whenever it thinks fit, convene a special general meeting of the co-operative.

**REQUISITION OF GENERAL MEETINGS**

54. (a) The board must convene a general meeting of the Co-operative on the requisition in writing by active members who together are able to cast at least 20% of the total number of votes to be cast at a meeting of the Co-operative.
- (b) The requisition must:
- (i) state the objects of the meeting; and
  - (ii) be signed by the requisitioning members (and may consist of several documents in like form each signed by one or more of the requisitioning members); and
  - (iii) be served on the Co-operative by being lodged at the registered office of the Co-operative.

**REQUISITIONED MEETING MUST BE CONVENED AS SOON AS PRACTICAL**

55. (a) A meeting requisitioned by members in accordance with Rule 54 must be convened and held as soon as practicable and, in any case, must be held within 2 months after the requisition is served.
- (b) Where the board does not convene a meeting twenty one (21) days after the requisition is served, the following provisions apply:
- (i) the requisitioning members (or any of them representing at least half their aggregate voting rights) may convene the meeting in the same manner as nearly as possible as meetings are convened by the board;
  - (ii) for that purpose they may request the co-operative to supply a written statement setting out the names and addresses of the persons entitled when the requisition was served to receive notice of general meetings of the co-operative;
  - (iii) the board must send the requested statement to the requisitioning members within 7 days after the request for the statement is made.
  - (iv) the meeting convened by the requisitioning members must be held not later than 3 months after the requisition is served;
  - (v) any reasonable expenses incurred by the requisitioning members because of the board's failure to convene the meeting must be paid by the co-operative;
  - (vi) any such amount required to be paid by the co-operative is to be retained by the co-operative out of any money due from the co-operative by way of fees or other remuneration in respect of their services to such of the directors as were in default.

**NOTICE OF GENERAL MEETINGS**

56. (a) Subject to Rule 57, at least 14 days notice (not including the day on which the notice is served or deemed to be served, but including the day for which notice is given) shall be given of any general meeting in the manner stipulated in Rule 102.
- (b) Notice must be given to those persons who are, under these rules entitled to receive such notices from the co-operative, but the non-receipt of the notice by any member shall not invalidate the proceedings at such general meeting. The notice must specify the place, the day and the hour of the meeting and, in the case of special business, the general nature of that business.
- (c) Any member who has a resolution to submit to a general meeting must give written notice of the terms of the resolution to the co-operative not less than 28 days prior to the date of the meeting.

- (d) The board shall have inserted in any notice convening a general meeting any business which a member has notified of intention to move and for which notification has been given in accordance with this rule.
- (e) Notice of every general meeting shall be given in same manner as authorised in Rule 102 to:
  - (i) every member of the co-operative, except those members who have not supplied to the co-operative an address or facsimile number for the giving of notices to them; and
  - (ii) every person entitled to a share in consequence of the death, incapacity or bankruptcy of a member, who, but for that member's death, incapacity or bankruptcy, would not be entitled to receive notice of the meeting; and
  - (iii) the auditor or auditors of the co-operative.
- (f) Except as provided in this rule, no other persons shall be entitled to receive notices of general meetings.

#### NOTICE OF SPECIAL RESOLUTIONS

57. Notice of a special resolution shall be given to those persons, entitled to receive notice under Rule 56, at least 21 days before the general meeting and shall specify the intention to propose the resolution as a special resolution at that meeting and specify the terms of the special resolution.

#### BUSINESS OF GENERAL MEETINGS

58. (a) The ordinary business of the annual general meeting shall be :
- (i) to confirm minutes of the last preceding general meeting (whether annual or special); and
  - (ii) 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 source and application of funds, and the state of affairs at the end of that year; and
  - (iii) to declare the rates of dividend, bonus and rebate in accordance with Rule 97; and
  - (iv) to elect and determine the remuneration of directors; and
  - (v) to elect (if necessary) an auditor, or to determine the auditor's remuneration, or both.
- (b) The annual general meeting may also transact special business of which notice has been given to members in accordance with these rules.
- (c) All business of a general meeting, other than business of the annual general meeting that is by this rule termed ordinary business, should be deemed special business.

#### QUORUM AT GENERAL MEETINGS

59. (a) No item of business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting is considering that item.
- (b) Except where these rules state otherwise, **20%** of active members, or in any case not less than 11 members, present in person and entitled to vote constitute a quorum.

- (c) If within half an hour after the appointed time for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall be adjourned to the same day in the next week at the same time and place. If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the members present shall constitute a quorum.

#### CHAIRPERSON AT GENERAL MEETINGS

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

#### STANDING ORDERS AT GENERAL MEETINGS

61. The following standing orders shall be observed at the co-operative's meetings, subject to any suspension of, or amendment of, or addition to, these orders adopted for the purposes of that meeting by the members present at a meeting:
- (i) the mover of a motion shall not speak for more than 10 minutes. Subsequent speakers shall be allowed 5 minutes, and the mover of the proposition 5 minutes to reply. The meeting may however by simple majority extend in a particular instance the time permitted by this rule;
- (ii) whenever an amendment to an original motion is proposed, no second amendment shall be considered until the first amendment is disposed of;
- (iii) if an amendment is carried, the motion as so amended shall displace the original motion and may itself be amended;
- (iv) if an amendment is defeated, then a further amendment may be moved to the original motion. However, only one amendment shall be submitted to the meeting for discussion at one time;
- (v) the mover of every original motion, but not of an amendment, shall have the right to reply. Immediately after this the question shall be put from the chair. No other member shall speak more than once on the same question, unless permission is given for an explanation, or where the attention of the chairperson is called to a point of order;
- (vi) motions and amendments shall be submitted in writing, if requested by the chairperson;
- (vii) any discussion on a motion or amendment may be closed by a resolution "that the question be now put" being moved seconded, and carried. Such resolution shall be put to the meeting without debate.
- (viii) any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with the permission of the chairman provided that the permission may be conditional.
- (ix) standing orders may be suspended for any period by ordinary resolution.

**ATTENDANCE AND VOTING AT GENERAL MEETINGS**

62. (a) At any meeting of the co-operative a member, whose membership is required to be forfeited under Rule 15, is not entitled to attend.
- (b) A member of the co-operative is not entitled to vote at a meeting of the co-operative:
- (i) if the person is not an active member of the co-operative;
  - (ii) the person is excluded from voting under the Act or these rules.
- (c) At any general meeting a resolution put to the vote of the meeting shall (as provided in Section 201 of the Act) be decided on a show of hands. This is unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 5 members. If no poll is demanded, a declaration by the chairperson 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 of the proceedings of the co-operative shall be evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, that resolution.
- (d) If a poll is demanded, in accordance with Rule 62(c), it shall be taken in a manner which the chairperson directs. Unless the meeting is adjourned the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- A poll demanded on the election of a chairperson, or on a question of adjournment, shall be taken immediately.
- A poll demanded in accordance with Rule 62(c) may be withdrawn.
- (e) On a show of hands, or on a poll, every representative of a body corporate appointed in accordance with Section 68 of the Act, or every member (not under the age of 18) who is present at a meeting in person, shall have one vote. However, no member shall have a vote, or be entitled to vote, contrary to the Act.
- (f) In the case of joint membership, the joint members have 1 vote only between them and that vote may be exercised only by whichever of the joint members is the member whose name appears first in the register of members.
- (g) In the case of jointly held shares, each member (other than a joint member) holding the share is entitled to vote at a general meeting.
- (h) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.
- (i) All resolutions, except special resolutions, shall be determined by a simple majority.

**POSTAL BALLOT**

63. The co-operative may hold a postal ballot to determine any issue or proposal by the members in the manner prescribed in Schedule 2 of the Co-operatives Regulation 1997.

**SPECIAL RESOLUTION**

64. (a) A special resolution means a resolution of which notice has been given of the intention to propose the resolution as a special resolution and which is passed either by two-thirds of the members who vote at a general meeting in person in accordance with Rule 33; two-thirds in a postal ballot; or by three quarters of the members who cast votes in a special postal ballot of members.
- (b) A special postal ballot for the purposes of passing a special resolution must be conducted in relation to the following matters:

- (i) a conversion of a trading co-operative to a non-trading co-operative,
  - (ii) transfer of incorporation,
  - (iii) an acquisition or disposal of assets referred to in section 285,
  - (iv) the maximum permissible level of share interest in the co-operative,
  - (v) takeover,
  - (vi) merger,
  - (vii) transfer of engagements,
  - (viii) members' voluntary winding up.
- (c) A special resolution has effect from the date it is passed except in the following circumstances:
- (i) the removal of an auditor,
  - (ii) the expulsion of a member,
  - (iii) the alteration of a rule,
  - (iv) any matter for which a special resolution is required to be passed by special postal ballot (other than a special postal ballot in favour of a voluntary winding up).

in which case it has effect from the time it is registered by the Registrar.

#### BOARD OF DIRECTORS

65. (a) There shall be a board of **10** directors each of whom shall be a natural person and at least 18 years old.
- (b) The business of the co-operative is to be managed and controlled by the board of directors, and for that purpose the board may exercise all the powers of the co-operative that are not, by The Act or these rules, required to be exercised by the co-operative in general meeting.
- (c) The acts of a director are valid despite any defect that may afterwards be discovered in the appointment or qualification of the director.

#### QUALIFICATIONS OF DIRECTORS

66. (1) The qualification of a Director shall:
- (a) be engaged in the purchase, manufacture, distillation, blending, producing distribution or sale of alcoholic or non-alcoholic beverages and shall have a substantial financial interest in a licence in a State or Territory of Australia under the provisions of the relevant Liquor Act of that State or Territory under the provisions of such act shall be entitled to sell alcoholic beverages of any description; and
  - (b) hold not less than two hundred and fifty (250) shares in the Co-operative; and
  - (c) submit to the Board a Statutory Declaration giving details of all parties with an interest in the Licences referred to in sub clause (a) above; and
  - (d) he or she has paid to the Co-operative all levies and charges imposed in accordance with Rule 10A as at the date of nomination; and
  - (e) be an active member of the Co-operative in accordance with the Clause 14 of the Rules providing the Member's purchases for the preceding year exceed \$50,000; and
  - (f) not be appointed to the Board of Directors nor continue to hold office as a Director, if that Director is a member of a buying or promotion group (known as a Banner group) where that group is not a group, managed or controlled by the Co-operative nor shall the Director be a member of a buying or promotion or Banner group that is externally controlled or privately owned.

or

- (g) be a person who may be nominated by the Board of Directors for election as a non active member director if that person holds appropriate managerial or bank experience or qualifications acceptable to the Board of Directors.

66. (2) For the purpose of this rule, in order to hold a substantial financial interest in a liquor licence a person must demonstrate that they hold a real or actual financial interest in a liquor licence within the meaning of Section 42A(2) of the Liquor Act (NSW) 1982.

#### **FIRST AND SUBSEQUENT DIRECTORS**

67. The first directors are to be elected at the formation meeting of the co-operative.
68. At the first annual general meeting of the co-operative 5 of the directors shall retire. At the annual general meeting in each subsequent year the directors shall retire in rotation of 5 and 5

#### **RETIREMENT AND ELECTION OF DIRECTORS**

69. The directors to retire in any year shall (subject to the provision as to filling casual vacancies) be those who have been longest in office since their last election. As between persons who became directors on the same day to retire shall (unless they otherwise agree among themselves) be determined by lot. In such case, the order for retirement shall be the order in which the names are withdrawn.
70. A retiring director shall be eligible for re-election without nomination, subject to the person holding the qualifications specified in Rule 66.
71. (a) At an annual general meeting at which a director retires or a casual vacancy occurs the vacated office may be filled by electing a person to it.
- (b) Nominations for candidates to fill the vacant positions shall be sought in such manner as the board determines.
- (c) The election of directors shall be conducted at the meeting in such usual and proper manner as the board shall direct.

#### **DIRECTORS' REMUNERATION**

72. (a) The directors shall receive such remuneration for their services as shall be determined at a general meeting, and all necessary expenses incurred by them in the business of the Co-operative shall be refunded to them.
- (b) For the purposes of this rule "remuneration" means any money, consideration or benefit but does not include:
- (i) amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the co-operative or any subsidiary of the co-operative;
- (ii) in relation to an employee director - remuneration received or due and receivable as an employee.

#### **REQUISITION AND NOTICE OF BOARD MEETING**

73. (a) A meeting of the board of directors may be called by a director giving notice individually to every other director.
- (b) 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.
- (c) Meetings of the board (including those conducted in accordance with Rule 75) must be held at least once every 3 months and may be held as often as may be necessary for properly conducting the business and operations of the co-operative.

**PROCEEDINGS OF THE BOARD**

74. (a) Questions arising at any board meeting shall be decided by a majority of votes.
- (b) In the case of an equality of votes, the chairperson may have a casting vote.
- (c) A director shall not vote in respect of any contract or proposed contract with the co-operative in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this Rule, his vote shall not be counted.

**TRANSACTION OF BUSINESS OUTSIDE BOARD MEETINGS**

75. The board may in accordance with Section 210 of the Act transact any of its business:
- (a) (i) by the circulation of papers among all the members of the board, and a resolution in writing by a majority of those members is to be taken to be a decision of the board;
- (ii) at a meeting at which board members (or some board members) participate by telephone, closed-circuit television or other means, but only if any board member who speaks on a matter before the meeting, can be heard by the other members of the board.
- (b) For the purposes of this rule the chairperson of the board and each member of the board have the same voting rights as they have at an ordinary meeting of the board.
- (c) A resolution approved under paragraph (a)(i) is to be recorded in the minutes of the meetings of the board.
- (d) The secretary may circulate papers among members of the board for the purposes of paragraph (a)(i) by facsimile or other transmission of the information in the papers concerned.

**QUORUM FOR BOARD MEETINGS**

76. The quorum for a meeting of the board shall be **6** directors, being 50% or more of the number of directors, in accordance with Section 209(4) of the Act.

**APPOINTMENT OF DIRECTORS TO CONSTITUTE A QUORUM**

77. A casual vacancy on the board may be filled by the directors appointing a person to constitute a quorum until the next annual general meeting. In all other circumstances where a casual vacancy occurs, Rule 83 applies.

**CHAIRPERSON OF BOARD**

78. The chairperson of the board may be elected either by the board or at a general meeting of the co-operative. However, if no such chairperson is elected, or if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the directors present may choose one of their number to be chairperson of the meeting, until such time as the chairperson attends and is willing to act in that capacity.

**DELEGATION AND BOARD COMMITTEES**

79. (a) The board may (in accordance with Section 213 of the Act) by resolution delegate the exercise of such of the board's functions (other than this power of delegation) as are specified in the resolution:
- (i) to a director, or
  - (ii) to a committee of 2 or more directors, or
  - (iii) to a committee of members of the co-operative, or
  - (iv) to a committee of members of the co-operative and other persons if members comprise the majority of persons on the committee.
- The co-operative or the board may by resolution revoke wholly or in part any such delegation.
- (b) A power, the exercise of which has been delegated under this rule may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (c) A delegation under this rule may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- (d) Notwithstanding any delegation under this rule, the board may continue to exercise all or any of the powers delegated.

**EXERCISE OF DELEGATED POWER BY DIRECTORS**

80. (a) Where a power is exercised by a director (either alone or with other directors) and the exercise of the power is evidenced in writing, signed by the director in the name of the board or in the director's own name on behalf of the board, then the power shall be deemed to have been exercised by the board. This is so whether or not a resolution delegating the exercise of the power to the director was in force when the power was exercised, and whether or not any conditions or limitations referred to in Rule 77 (c) were observed by the director exercising the powers.
- (b) An instrument purporting to be signed by a director as referred to in Section 214(1) of the Act shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument executed by the co-operative under seal. Furthermore, until the contrary is proved, it shall be deemed to be an instrument signed by a delegate of the board under Section 213 of the Act.
- (c) A committee may elect a chairperson of their meetings. If no such chairperson is elected, or, if at any meeting the chairperson is not present within 5 minutes after the time appointed for holding the meeting, then the members present may choose one of their number to be chairperson of the meeting.
- (d) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and voting and in case of an equality of votes the chairperson shall have a second or casting vote.

**REMOVAL OF DIRECTOR FROM OFFICE**

81. The co-operative may, by ordinary resolution, remove any director before the expiration of the director's period of office, and may by a simple majority appoint another person in place of the director. The person so appointed shall retire at the same time as the removed director would have done if not removed.

**VACATION OF OFFICE OF DIRECTOR**

82. A director vacates office in such circumstances (if any) as are provided in the rules of the co-operative and in any of the following cases :

- (a) if the person is an insolvent under administration (as defined in the Law);
- (b) if the person is mentally incapacitated or the subject of an order under a law of another State or of a Territory relating to mental health;
- (c) if the person has been convicted of an offence and that conviction disqualifies a person from being a director, as provided by Section 208(2) of the Act;
- (d) if the director absents himself/herself from 3 consecutive ordinary meetings of the board without its leave;
- (e) if the director resigns from office by notice in writing given by the director to the co-operative;
- (f) if the director is removed from office by ordinary resolution of the co-operative;
- (g) if the person ceases to hold the qualification by reason of which the person was qualified to be a director;
- (h) if the director becomes an employee of the co-operative, unless elected under Section 216 of the Act;
- (i) if an administrator of the co-operative's affairs is appointed under Division 6 of Part 12 of the Act;
- (j) as provided by Section 217 of the Act;
- (k) if the director is directly or indirectly interested in any contract or proposed contract with the co-operative and fails to declare his/her interest as required under Section 234 of the Act;
- (l) if the director is removed from office, by a voluntary administrator of the co-operative appointed under Part 5.3A of the Law, as applying under Section 332 of the Act.

#### FILLING OF CASUAL VACANCIES

83. (a) In the event that the board does not make an appointment under Rule 77, a casual vacancy is to be filled:
- (i) by election by the members held:
    - at a meeting of the co-operative; or
    - by means of a postal ballot; or
    - in the manner specified in the rules of the co-operative for the ordinary election of directors; or
  - (ii) in such other manner as the Registrar may approve in a particular case.
- (b) The person so chosen shall retire at the same time as the director who vacated the office would have done if that director had not vacated it.
- (c) For the purposes of this rule, a casual vacancy shall arise where the office of a director is vacated in accordance with Rule 82.

#### OTHER COMMITTEES

84. (a) The board may by resolution appoint committees comprising of members or other persons or both, to act in an advisory role to the board and to any committees of directors.
- (b) The provisions of Rule 80 (c) and (d) apply to committees appointed under this rule, subject to any variations approved of by the board.

- (c) The quorum for any meeting of the committee shall be one-half (or where one-half is not a whole number the whole number next higher than one-half) of the number of members in the committee.

#### MINUTES OF MEETINGS

85. (a) The board shall have minutes of meetings made in books provided for the purpose, and, in particular:
- (i) of all appointments of officers and employees made by the directors;
  - (ii) of the names of the directors present at each meeting of the board and of any committee of the board;
  - (iii) of all resolutions and proceedings at all meetings of the co-operative and of directors and of committees of directors.
- (b) Minutes must be recorded in the minute book within 28 days of the date of the meeting to which they relate.
- (c) The confirmation of such minutes, signed by the chairperson, shall be taken as the first business at the next succeeding meeting of the co-operative, board or committee to which the minutes relate. If it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.
- (d) Every director present at any meeting shall sign their name in a book to be kept for that purpose.
- (e) The minutes are to be kept in the English language.

#### OFFICERS

86. (a) Without prejudice to the general powers conferred on the board by the Act or these rules, the board shall, subject to any applicable Industrial Award or Agreement, have power to appoint, remove or suspend officers, servants, agents and contractors, and to fix their powers, duties and remuneration.
- (b) For the purposes of this rule:
- (i) "Industrial Award or Agreement" means an Award or Enterprise Agreement made or approved under a State or Federal Act regulating industrial relations.
  - (ii) "Enterprise Agreement" includes an Enterprise Flexibility Agreement, Australian Workplace Agreement, or Certified Agreement.

#### APPOINTMENT OF SECRETARY

87. (a) The board shall appoint a secretary who shall perform all the functions and duties required by the Act, the Regulations, the rules and the law to be performed or undertaken by the secretary of the co-operative.
- (b) A secretary shall:
- (i) be appointed to the office on such terms and conditions as the board may determine; and
  - (ii) hold office until death, or removed by the board, or resignation from office.

**INSURANCE**

88. The board shall arrange insurance against loss, damage to or liability of the co-operative by reason of fire, accident or otherwise.

**FINANCIAL YEAR**

89. The financial year of the co-operative shall end on the *30<sup>th</sup> June*.

**ACCOUNTS**

90. (a) The board shall have prepared the accounts, statements and directors' report in accordance with the Corporations Law, as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (b) The board shall submit those accounts, statements and report, together with the auditors' report on those accounts, to the annual general meeting of the co-operative, in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.
- (c) The board shall also have a copy of everything required to be submitted under paragraph (b) displayed at the registered office of the co-operative for a period of not less than 14 days before the date of the annual general meeting of the co-operative.
- (d) The board shall send a copy of everything required to be submitted under paragraph (b) to each member with the notice of the annual general meeting of the co-operative.

**BANKING**

91. (a) The board shall have a banking account or accounts in the name of the co-operative, into which all moneys received shall be paid as soon as possible after receipt.
- (b) 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, shall each be signed by three persons authorised by the board.

**APPOINTMENT, DUTIES AND RESPONSIBILITIES OF AUDITORS**

92. (a) One or more auditors shall be appointed, hold office, be remunerated, be removed and have qualifications, duties and responsibilities as provided in these rules or as otherwise provided in, or permitted by, the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997, or any order made by the Registrar pursuant to that Regulation or Section 244(1) of the Act.
- (b) Within one month after the date on which the co-operative is registered, the directors shall appoint an auditor of the co-operative, unless the co-operative at a general meeting has already appointed an auditor. An auditor appointed under this clause shall hold office until the first annual general meeting of the co-operative.
- (c) The co-operative shall at its first annual general meeting appoint an auditor of the co-operative; and at each subsequent annual general meeting, if there is a vacancy in the office of auditor, the co-operative shall appoint an auditor to fill the vacancy.
- (d) An auditor appointed under paragraph (c) of this rule shall hold office until death or removal or resignation from office or until ceasing to be capable of acting as auditor in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.

- (e) The board shall fill any vacancy in the office of auditor, other than a vacancy caused by the removal of an auditor from office, within one month of such vacancy occurring, unless the co-operative at a general meeting has already appointed an auditor to fill the vacancy. A person or firm appointed as Auditor of the co-operative pursuant to this paragraph holds office, subject to the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997 until the next Annual General Meeting of the co-operative.

While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

- (f) The co-operative or the board shall not appoint as auditor a person who has not consented in writing to the appointment or who has withdrawn such consent, or a person of whose nomination notice has not been given in accordance with the Corporations Law as adopted by Clause 15 of the Co-operatives Regulation 1997.

- (g) A person is not qualified to be appointed auditor of the co-operative if:

- (i) the person is not a registered company auditor;
- (ii) the person or corporation in which the person is a substantial shareholder, is indebted to the co-operative (or to a subsidiary corporation of the co-operative) for an amount exceeding \$ 5,000; or
- (iii) the person is:
  - (A) an officer of the co-operative;
  - (B) is a partner, employer or employee of an officer of the co-operative;
  - (C) is a partner of an employee of an officer of the co-operative; or
  - (D) is an employee of an employee of an officer of the co-operative.

- (h) A firm is not qualified to be appointed auditor of the co-operative unless:

- (i) at least 1 member of the firm is a registered company auditor who is ordinarily resident in New South Wales;
- (ii) no member of the firm or corporation in which the firm is a substantial shareholder, is indebted to the co-operative (a subsidiary of the co-operative) for an amount exceeding \$5,000; or
- (iii) no member of the firm is:
  - (A) an officer of the co-operative;
  - (B) is a partner employer or employee of an officer of the co-operative;
  - (C) is a partner of an employee of an officer of the co-operative; or
  - (D) is an employee of an employee of an officer of the co-operative;
- (iv) no officer of the co-operative receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

- (i) All reasonable fees and expenses of the auditor are payable by the co-operative.

- (j) The board shall enable the auditor to have access to all books, accounts, vouchers, securities and documents of the co-operative, and to be furnished with such information and explanation by the board members or any other officers as may be necessary for the performance of the duties of the auditor.

- (k) The auditor is entitled to attend any general meeting of the co-operative and to receive all notices of and other communications relating to any general meeting which any

member of the co-operative is entitled to receive. The auditor is also entitled to be heard, at any general meeting which the auditor attends, on any part of the business of the meeting of concerns to the auditor.

#### REMOVAL OF AUDITORS

93. (a) The auditor may be removed from office by resolution at a general meeting.
- (b) Notice of intention to move the resolution must be given to the co-operative not less than 28 days before the meeting at which the resolution is moved, but if, after notice has been given, a meeting is convened for a date 28 days or less after notice has been given, notice shall be deemed to have been properly given.
- (c) Where special notice of a resolution to remove an auditor is received by the co-operative, it shall as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice with the Registrar.
- (d) The co-operative shall give notice of a resolution to remove the auditor to persons entitled to be given notice of a meeting of the co-operative at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give notice of the resolution to them in any manner allowed by these rules not less than 14 days before the meeting.
- (e) Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the co-operative and request that before the meeting at which the resolution is to be considered, a copy of the representations be sent by the co-operative at its expense to every member of the co-operative to whom notice of the meeting is sent.
- (f) Unless the Registrar on the application of the co-operative otherwise orders, the co-operative shall send a copy of the representations in accordance with the auditor's request. The auditor may require that the representations be read out at the meeting and may also speak at the meeting.

#### RESIGNATION OF AUDITOR

94. (a) The auditor may, by notice in writing given to the co-operative, resign as auditor of the co-operative if:
- (i) the auditor has, by notice in writing given to the Registrar, applied for consent to resign and stated the reasons and, at or about the same time, notified the co-operative in writing of the application; and
- (ii) the auditor has received the consent of the Registrar.
- (b) The resignation of the auditor takes effect:
- (i) on the date (if any) specified for the purpose in the notice of resignation;
- (ii) on the date on which the Registrar consents to the resignation; or
- (iii) on the date (if any) fixed by the Registrar for the purpose, whichever last occurs.
- (c) Within 14 days after the removal from office of the auditor or after the receipt of a notice of a resignation from an auditor, the Co-operative shall lodge with the Registrar a notice of the removal or resignation on the prescribed form, and, where there is a trustee for the holders of debentures of the co-operative, give to the trustee a copy of the notice lodged with the Registrar.

**DISTRIBUTION OF SURPLUS**

95. (a) The board may resolve to retain all or part of the surplus arising in a year from the business of the co-operative to be applied for the benefit of the co-operative.
- (b) Subject to paragraph (a), the board may apply part of the surplus arising in a year from the business of the co-operative or any part of the reserves to:
- (i) be paid to a member by way of bonus or rebate based on the business done by the member with the co-operative; or
  - (ii) be applied by the issue of bonus shares to a member; or
  - (iii) be paid to a member by way of a limited dividend for the shares held ("limited dividend" means a dividend of not more than the prescribed amount);
- (c) The amount of a rebate or dividend payable to a member under (b)(i) and (iii) may, with the consent of the member, be applied:
- (i) in payment for the issue to the member of bonus shares; or
  - (ii) as a loan to the co-operative.
- (d) A part of the surplus, not more than **10%**, arising in any year from the business of the co-operative may be applied for:
- (i) charitable purposes; or
  - (ii) supporting any activity approved by the co-operative.
- (e) "Surplus" means the excess of income over expenditure after making appropriate allowance for taxation expense, depreciation in value of the property of the co-operative and for future contingencies.

**DECLARATION OF DIVIDEND, BONUS OR REBATE**

96. (a) A dividend, bonus or rebate shall be declared at any general meeting of the co-operative but shall not exceed the amount recommended by the board, nor exceed the percentage permitted by the Act or Regulations.
- (b) Notice of any dividend, bonus or rebate that may have been declared shall be given by displaying it at the registered office of the co-operative and in any other manner the board shall determine.

**PAYMENT OF DIVIDEND OR BONUS OR REBATE**

97. (a) 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 bonus or rebate in proportion to the business done by him or her with the co-operative, if:
- (i) the person was a member at the time the business was done and the membership has lapsed; or
  - (ii) the person has applied for membership after the business was done.
- (b) Nothing in this section precludes the payment of a bonus to an employee under the terms of the employee's employment.
- (c) Any dividend, bonus or rebate which shall accrue to the holder of shares on which all calls due have been paid shall be paid to that holder. However, any dividend, bonus or rebate which shall accrue to the holder of partially paid up shares shall be applied to paying off any subscriptions or calls on shares which may (at the time the dividend or bonus becomes payable) be due and unpaid by that holder.

- (d) If several persons are registered as joint holders of any share any one of them may give a valid receipt for any dividend or other money payable on or in respect of the share.
- (e) No dividend, bonus or rebate shall bear interest against the co-operative.

#### DETERMINATION OF DIVIDEND

98. The board may recommend:

- (a) a higher rate of dividend in respect of shares held by a member in excess of the minimum number of shares specified in Rule 22; or
- (b) different rates of dividend on shares based on the business done by shareholders with the co-operative,

to be declared at a general meeting in accordance with Rule 96 and if declared, the board shall be authorised to pay the dividend to members, subject to the provisions of Rule 96.

#### DISTRIBUTION IN SPECIE

99. (a) After the declaration of a dividend the members may by resolution direct payment of the dividend wholly or partly, by the distribution of specific assets such as paid up shares in debentures of the co-operative or other corporation, and the board shall give effect to such a resolution.
- (b) In the event of a difficulty arising in regard to such a distribution, the board may settle the matter as they consider expedient, and fix the value for distribution of the specific assets or any part of these assets and may determine that cash payments will be made to any member on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the board considers appropriate.
- (c) The provisions of this rule are subject to the provisions of Section 285 of the Act and shall not be interpreted as authorising the members in general meeting, or the board, to contravene any of the provisions of the section.

#### PROVISION FOR LOSS

100. The board shall make such provisions for loss which may result from the transactions of the co-operative as the Act requires or allows.

#### DISPUTES

101. (a) In this Rule:
- (i) "party" includes:
    - (A) members of the co-operative;
    - (B) any aggrieved person who has ceased to be a member in the last three months;
    - (C) any person claiming through or under a member or any aggrieved person referred to in Rule 101(a)(i)(B); and
    - (D) the co-operative, including the board and any other officer of the co-operative.
  - (ii) "dispute" may only refer to a matter affecting a person of the type mentioned above (A) - (C) in the capacity of such a person as a member or ex-member of

the co-operative, or as a person claiming through or under a member of the co-operative in that person's capacity as a member.

- (b) If a dispute arises a party may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of the Rule except where the person seeks urgent interlocutory relief.
- (c) A party claiming that a dispute has arisen must give written notice to the other party or parties specifying the nature of the dispute.
- (d) On receipt of that notice by that other party or parties, the parties must endeavour to resolve the dispute expeditiously, using the mediation rules of the NSW Law Co-operative. (Copy available from the Registry of Co-operatives (02) 6333 1421).
- (e) If the parties do not agree within seven days of receipt of the notice (or such further period as agreed in writing between them) as to:
  - (i) the timetable for all steps in the procedures; and
  - (ii) the selection and compensation of the independent person required for mediation;

then the dispute shall be settled by arbitration in accordance with the Commercial Arbitration Act 1984.
- (f) Nothing in this rule shall extend to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.

## NOTICES

- 102.
- (a) A notice may be given by the co-operative to any member either personally or by sending it by post to the member's registered address, or where the member has notified the co-operative of a facsimile number, by facsimile transmission to the number notified. If the member has no registered address then the notice can be sent to any address supplied by the member to the co-operative for the giving of notices.
  - (b) Where a notice is sent by post, service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice. In the case of a notice of a meeting, service is deemed to be effected at the expiration of 24 hours after the letter containing the notice is posted. In every other case service is deemed to be effected at the time at which the letter would be delivered in the ordinary course of post and in proving such service it shall be sufficient to prove that the envelope containing the notice was properly addressed and posted.
  - (c) If a member has no registered address (and has not supplied to the co-operative an address for the giving of notices) a notice addressed to the member and advertised in the newspaper circulating in the neighbourhood of the registered office of the co-operative shall be deemed to be duly given to the member on the date on which the advertisement appears.
  - (d) A notice forwarded by facsimile transmission shall be deemed to have been served, unless the sender's facsimile machine indicates a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
  - (e) A notice may be given by the co-operative to the joint holders of a share by giving the notice to the joint holder named first in the register of members and shares in respect of that share.
  - (f) A notice may be given by the co-operative to the person entitled to a share in consequence of the death, incapacity or bankruptcy of a member by sending it through the post in a prepaid letter addressed to that person by name. Alternatively it can be addressed to the person by the title of representative of the deceased, or incapacitated person, or trustee of the bankrupt, or by any like description. The address should be that

supplied for the purpose by the person claiming to be entitled. Alternatively, if no such address has been supplied, the notice can be given in the manner in which it could have been given if the death, incapacity or bankruptcy had not occurred.

- (g) For the purpose of this rule "registered address" means the address of the member as appearing in the register of members and shares.

#### WINDING UP

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

#### FINES PAYABLE BY MEMBERS

104. The board may impose on a member maximum fine of \$20.00 for any infringement of the rules.

#### SCHEDULE OF CHARGES

105. Copy book of rules : ..... **\$2.00**: Rule 2(b)
- Copy of Register : ..... **\$2.00**: Rule 13(b)
- Nominal Value of Shares : ..... **\$1.00**: Rule 20(a)
- Duplicate Share Certificate : ..... **\$10.00**: Rule 37(c)
- Transfer of Shares : ..... **\$1.00**: Rule 43(f)
- Maximum Fine : ..... **\$20.00**: Rule 104(a)

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