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# **Constitution of Farmers' Mutual Group**

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## Table of contents

<b>1</b>	<b>Definitions .....</b>	<b>1</b>
<b>2</b>	<b>Purpose of the Mutual.....</b>	<b>2</b>
<b>3</b>	<b>Membership of the Mutual.....</b>	<b>3</b>
	Eligibility.....	3
	Continuity of membership.....	3
	Cessation of membership.....	3
<b>4</b>	<b>Management of the Mutual .....</b>	<b>3</b>
	Role of the Board.....	3
	Members' resolutions regarding management.....	4
	Delegation by the Board.....	4
	Chief Executive Officer.....	4
	Major transactions.....	4
<b>5</b>	<b>Meetings of Members.....</b>	<b>4</b>
	Annual meetings.....	4
	Special meetings.....	5
	Convening special meetings.....	5
	Chairperson.....	5
	Entitlement to notice of meetings.....	5
	Methods of holding meetings.....	5
	Place.....	6
	Quorum.....	6
	Voting.....	6
	Postal votes.....	7
	Different polls to be taken at different times.....	7
	Proxy allowed to demand a poll.....	7
	Proxies.....	7
	Form of proxy.....	7
	Chairperson as proxy.....	7
	Validity on death or insanity.....	8
	Notice of proxy to be lodged 48 hours before meeting.....	8
	Notice of proxy to be lodged in particular manner 48 hours before meeting.....	8
	Corporations may act by representatives.....	8
	Votes of joint holders and personal representatives.....	8
	Appointment of attorney.....	8
	Powers to adjourn meetings.....	9
	Powers to dissolve meetings.....	9
	Member proposals.....	9
	Minutes.....	10
	Other.....	10
<b>6</b>	<b>Directors' duties.....</b>	<b>10</b>
	Duties of Directors.....	10
	Reliance on information and advice.....	11
<b>7</b>	<b>Self-interest transactions .....</b>	<b>12</b>
	Interested Directors.....	12

	Actions by interested Directors.....	13
	Use of company information.....	13
	Disclosure and use of information generally .....	14
<b>8</b>	<b>Appointment and removal of Directors.....</b>	<b>14</b>
	Minimum number .....	14
	Majority of Board to be Members .....	14
	Appointment of Member Directors.....	14
	Consent and qualification of Directors.....	14
	De facto Member Directors.....	15
	Rotation.....	15
	Director retirements .....	15
	Order of retirement .....	15
	Tenure.....	16
	Vacation of office .....	16
	Appointment of Directors by Board .....	16
	Appointed Directors .....	16
	Casual Member Director vacancies .....	17
	Members may nominate a Member as a Member Director.....	17
<b>9</b>	<b>Directors' meetings .....</b>	<b>18</b>
	Chairperson .....	18
	Notice of meeting.....	18
	Methods of holding meetings.....	18
	Voting.....	19
	Minutes .....	19
	Unanimous resolution .....	19
	Other .....	20
<b>10</b>	<b>Remuneration and other benefits .....</b>	<b>20</b>
	Member approval of Director remuneration .....	20
	Expenses and special remuneration .....	21
	Payments in arrears and pro-rata.....	21
<b>11</b>	<b>Indemnity and insurance .....</b>	<b>21</b>
<b>12</b>	<b>Method of contracting.....</b>	<b>22</b>
<b>13</b>	<b>Auditor .....</b>	<b>23</b>
<b>14</b>	<b>Alteration of Constitution - change of name .....</b>	<b>23</b>
<b>15</b>	<b>Accounts.....</b>	<b>23</b>
<b>16</b>	<b>Manner of service on Members and creditors.....</b>	<b>23</b>
<b>17</b>	<b>Removal from the register .....</b>	<b>24</b>
<b>18</b>	<b>Registered office and address for service.....</b>	<b>25</b>

## 1 Definitions

1.1 In this Constitution, unless the context otherwise requires:

**Act** means the Companies Act 1993.

**Appointed Director** means a Director who is appointed in accordance with clause 8.17

**Board** in relation to the Mutual has the meaning as set out in section 127 of the Act, applied as if the Mutual were a company under the Act.

**Business Day** means a day on other than Saturday, Sunday or a Public Holiday recognised in New Zealand.

**CEO** means Chief Executive Officer.

**Constitution** means this Constitution as the same may be amended from time to time.

**Customer** has the meaning set out in section 9 of the Mutual Act.

**Director** in relation to the Mutual has the meaning set out in section 126 of the Act, applied as if the Mutual were a company under the Act and includes both Member Directors and Appointed Directors.

**Fit & Proper Policy** means the Fit and Proper Person Policy set by the Mutual from time to time and which sets out the Director eligibility criteria and standards.

**FMIA** means Farmers' Mutual Insurance Association.

**Member** means a person whose name is entered in the Members Register as a member of the Mutual in accordance with the Mutual Act.

**Member Director** means a Director who is not an Appointed Director.

**Members Register** means the Members Register required to be kept under section 19(1) of the Mutual Act.

**Mutual** means the Farmers' Mutual Group, an association previously incorporated under the Mutual Insurance Act 1955 and now incorporated under the Mutual Act.

**Mutual Act** means the Farmers' Mutual Group Act 2007.

**Ordinary Resolution** means a resolution approved by a simple majority of votes of Members entitled to vote and voting on the question.

**Qualifying Policy** means any Rural Risk Insurance policy issued by the Mutual or a subsidiary of the Mutual.

**Register** means the register maintained by the New Zealand Companies Office on which the Mutual is registered.

**Related Company** has the meaning given in section 2(3) of the Act (read together with section 2(4) of the Act).

**Relevant Interest** has the meaning given in the Financial Markets Conduct Act 2013.

**Rural Risk Insurance** means any contract of insurance issued in New Zealand by the Mutual or any subsidiary of the Mutual which the Board has determined is predominantly rural in character.

**Special Resolution** means a resolution on which not less than 500 Members entitled to vote cast votes and which is approved by a majority of seventy five percent (75%) of votes of those Members entitled to vote and voting on the question.

**Subsidiary** means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 inclusive of the Act); and
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of any financial reporting standard approved in terms of section 19 of the Financial Reporting Act 2013.

1.2 In this Constitution:

- 1.2.1 Any headings appear as a matter of convenience and shall not affect the construction of the Constitution.
- 1.2.2 References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or instrument as from time to time amended or re-enacted, or as the context permits, provisions substituted therefore and for the time being in force.
- 1.2.3 The singular includes the plural and vice versa and words importing any gender includes the other genders.
- 1.2.4 The words 'written' and 'writing' include scanned documentation and email communications and any other means of communication resulting in permanent visible reproduction.
- 1.2.5 Unless stated otherwise, references to monetary amounts are to New Zealand currency and references to time are to New Zealand time.
- 1.2.6 Except as specified in clause 1.1, words or expressions which are defined in the Mutual Act or the Act shall have the meaning given by the Mutual Act or the Act (as applicable) unless the context otherwise requires.

## 2 Purpose of the Mutual

- 2.1 The purpose of the Mutual is to provide “A better deal for rural New Zealand (Aotearoa)” and its vision is “helping build strong and prosperous rural communities”.

Both involve the principle of delivering returns to the Mutual for the benefit of Members and clients of the Mutual whilst having an overall positive impact on New Zealand/ Aotearoa society and the environment.

### **3 Membership of the Mutual**

#### **Eligibility**

- 3.1 Every legal holder of a Qualifying Policy is eligible to be a Member. This clause is subject to clause 3.2.
- 3.2 The following persons are not eligible to be a Member:
- 3.2.1 a chargee or mortgagee of a Qualifying Policy
  - 3.2.2 a Subsidiary of the Mutual
  - 3.2.3 a lender who, for security purposes, has been assigned a Qualifying Policy or named in a Qualifying Policy as a beneficiary.

#### **Continuity of membership**

- 3.3 Every person who is a registered member of FMIA immediately before the date of incorporation (as defined in the Mutual Act) shall, subject to the terms of the Mutual Act, be a Member from the date of incorporation.

#### **Cessation of membership**

- 3.4 Every Member may remain a Member so long as they are a Customer and notwithstanding they cease to hold a Qualifying Policy. A Member who is a Member solely because they are a Customer shall cease to be a Member when they cease to be a Customer. Cessation of Membership does not release the Member or the Mutual from any liability in respect of a Qualifying Policy or Membership accrued prior to cessation.

### **4 Management of the Mutual**

#### **Role of the Board**

- 4.1 The business and affairs of the Mutual must be managed by, or under the direction or supervision of, the Board, subject to clause 4.8.
- 4.2 Notwithstanding clause 4.1 of this Constitution:
- 4.2.1 the chairperson of a meeting of Members must allow a reasonable opportunity for Members at the meeting to question, discuss or comment on the management of the Mutual; and
  - 4.2.2 a meeting of Members may pass a resolution relating to the management of the Mutual.

### **Members' resolutions regarding management**

- 4.3 A resolution relating to the management of the Mutual passed by a meeting of Members shall not be binding on the Board.

### **Delegation by the Board**

- 4.4 The Board may delegate to a committee of Directors, a Director or employee of the Mutual, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.
- 4.5 The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:
- 4.5.1 believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on Directors of the Mutual by the Mutual Act and this Constitution; and
  - 4.5.2 has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

### **Chief Executive Officer**

- 4.6 Subject to clause 4.7, the Board may from time to time appoint any person to the office of CEO of the Mutual.
- 4.7 No person shall be appointed CEO of the Mutual who is also, at any time in which the appointment is effective, a Director.

### **Major transactions**

- 4.8 The Mutual must not enter into a major transaction (as that term is defined in section 129 of the Act) unless the transaction is:
- 4.8.1 approved by a Special Resolution; or
  - 4.8.2 contingent upon approval by a Special Resolution.

## **5 Meetings of Members**

### **Annual meetings**

- 5.1 An annual meeting of Members shall be held:
- 5.1.1 not later than 6 months after the balance date of the Mutual; and
  - 5.1.2 not later than 15 months after the previous annual meeting.
- 5.2 The Board shall cause the Annual Report and financial statements of the Mutual for the last financial year, or a summary of them, to be presented at each annual meeting and shall give Members an opportunity to discuss them.

### **Special meetings**

- 5.3 All meetings other than the annual meeting shall be called special meetings.

### **Convening special meetings**

- 5.4 A special meeting of Members entitled to vote on an issue:
- 5.4.1 may be called at any time by the Board; and
  - 5.4.2 must be called by the Board on the written request of Members holding not less than 5 percent (5%) of the voting rights entitled to be exercised on the issue.

### **Chairperson**

- 5.5 If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of Members, he or she must chair the meeting.
- 5.6 If no chairperson of the Board has been elected or if, at any meeting of Members, the chairperson of the Board is not present within 15 minutes of the time appointed for the meeting, the Members present may choose any other Director to be chairperson of the meeting.
- 5.7 If no Director is present within 30 minutes of the time appointed for the commencement of the meeting, or no Director is willing to act as chairperson, the Members present may choose one of their number to be chairperson of the meeting.

### **Entitlement to notice of meetings**

- 5.8 The following Members are entitled to receive notice of a meeting of Members:
- 5.8.1 those Members who are listed in the Members register on a particular date that is set out in the notice by the Board for that purpose; or
  - 5.8.2 if the Board does not set out a particular date in the notice of a meeting of Members, those Members who are listed in the Members Register on the date that is seven working days before the date on which the notice of the meeting is sent.
- 5.9 Under clause 5.8, a notice date must not be more than 30, or less than 10, working days before the date of the meeting.

### **Methods of holding meetings**

- 5.10 A meeting of Members may be held:
- 5.10.1 by a number of Members who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - 5.10.2 if the Board approves and there are proper facilities available, the Mutual may arrange for a meeting of Members to be held by means of audio, or audio and visual, communications that permit all Members participating and constituting a quorum to simultaneously hear each other during the



meeting. A Member participating by such means is deemed to be present at the meeting.

- 5.11 A Mutual employee or representative must be present at each location where Members have congregated for the purposes of holding a meeting to assist with the conducting of the meeting and the counting of votes.
- 5.12 Where a meeting is held pursuant to clause 5.10.2, any irregularities in proceedings, including but not limited to Members losing connection to the meeting, shall not invalidate any of the proceedings.

### **Place**

- 5.13 All meetings of Members shall be held in such place as the Board determines from time to time.

### **Quorum**

- 5.14 No business may be transacted at a meeting of Members if a quorum is not present.
- 5.15 A quorum for a meeting of Members is present if Members who have the right to vote at the meeting or their proxies, attorneys or representatives (in the case of a body corporate) are present who number not less than 20.
- 5.16 If a quorum is not present within 30 minutes after the time appointed for the meeting:
  - 5.16.1 in the case of a meeting called by the Board on the written request of Members pursuant to section 21(5)(b) of the Mutual Act, the meeting is dissolved;
  - 5.16.2 in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the Directors may appoint, and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Members or their proxies present are a quorum.

### **Voting**

- 5.17 In the case of a meeting of Members assembled together in accordance with clause 5.10, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
  - 5.17.1 voting by voice;
  - 5.17.2 voting by show of hands; or
  - 5.17.3 online forum (if made available by the Mutual).
- 5.18 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 5.19.
- 5.19 At a meeting of Members a poll may be demanded by:

5.19.1 the chairperson of the meeting;

5.19.2 not less than five Members having the right to vote at the meeting.

5.20 A poll may be demanded either before or after the vote is taken on a resolution.

5.21 The chairperson of a Members' meeting is entitled to a casting vote.

5.22 No vote of a Member who owes the Mutual or a subsidiary of the Mutual any overdue amount shall be counted.

#### **Postal votes**

5.23 A Member may not exercise the right to vote at a meeting by casting a postal vote.

#### **Different polls to be taken at different times**

5.24 A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and the meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

#### **Proxy allowed to demand a poll**

5.25 The instrument appointing a proxy to vote at a meeting confers authority to demand or join in demanding a poll, and a demand by a person as proxy for a Member shall have the same effect as a demand by the Member.

#### **Proxies**

5.26 A Member may exercise the right to vote either by being present in person or by proxy.

5.27 A proxy for a Member is entitled to attend and be heard at a meeting of Members as if the proxy were the Member.

5.28 A Member may confer upon their proxy the ability to exercise their own discretion in casting the Members' votes. If the Member has not indicated on the proxy form how the proxy is to vote, it will be deemed that the proxy may exercise his or her own discretion in casting the votes.

5.29 A proxy must be appointed by notice in writing signed by the Member which must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.

#### **Form of proxy**

5.30 A notice appointing a proxy shall be in a form approved by the Board from time to time.

#### **Chairperson as proxy**

5.31 If a proxy fails to attend a meeting or if no person is named as a proxy in the proxy form, the chairperson of the meeting will act as the Member's proxy and will vote on the Member's behalf in accordance with the Member's instructions set out in the form.

**Validity on death or insanity**

- 5.32 A vote given in accordance with the terms of a notice of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy is given, if no intimation in writing of such death, insanity, or revocation has been received by the Mutual at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used or has been handed to the chairperson of the meeting before the vote is given.

**Notice of proxy to be lodged 48 hours before meeting**

- 5.33 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in clause 5.34.

**Notice of proxy to be lodged in particular manner 48 hours before meeting**

- 5.34 A copy of the written notice appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the Mutual or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. A proxy notice may also be emailed to an email address or lodged through an online forum (if made available by the Mutual), nominated in the notice convening the meeting.

**Corporations may act by representatives**

- 5.35 A body corporate which is a Member may appoint a representative to attend a meeting of Members on its behalf in the same manner as that in which it could appoint a proxy.

**Votes of joint holders and personal representatives**

- 5.36 Where two or more persons are jointly registered as a single Member, the vote of the person named first in the Members register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.
- 5.37 Where two or more persons are jointly entitled to be registered as a single Member as trustee, executor or administrator for a deceased or bankrupt Member, the right of one of them to vote shall be determined by the order in which their names appear in the Members register.

**Appointment of attorney**

- 5.38 Any Member may at any time and from time to time by power of attorney appoint any person to be that Member's attorney to attend meetings of the Mutual and on behalf of the Member to vote and generally to act for the Member in the capacity as such as fully and effectually to all intents and purposes as such Member could do if present in person or by proxy or representative.

### **Powers to adjourn meetings**

- 5.39 The chairperson of any meeting at which a quorum is present may, at his or her sole discretion (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.
- 5.40 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 5.41 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **Powers to dissolve meetings**

- 5.42 If any meeting shall become so disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, despite any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her absolute discretion and without giving any reason, either adjourn or dissolve the meeting.
- 5.43 If any meeting is dissolved by the chairperson pursuant to clause 5.42 and any resolution concerning the remuneration of the Auditor was not voted upon by the meeting, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor.

### **Member proposals**

- 5.44 A Member may give written notice to the Board of a matter, other than the nomination of a person for appointment as a Director, the Member proposes to raise for discussion or resolution at the next meeting of Members at which the Member is entitled to vote.
- 5.45 If the notice is received by the Board not less than 30 Business Days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, at the expense of the Mutual, send written notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.
- 5.46 If the notice is received by the Board not less than five Business Days and not more than 20 Business Days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, at the expense of the Member, send written notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.
- 5.47 If the notice is received by the Board less than five Business Days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, the Board must, if practicable, and at the expense of the Member, send written notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

- 5.48 The Directors must give the proposing Member the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Member in support of the proposal, together with the name and address of the proposing Member.
- 5.49 The Board is not required to include in or with the notice given by the Board:
- 5.49.1 any part of a statement prepared by a Member which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
  - 5.49.2 any part of a proposal or resolution prepared by a Member that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- 5.50 Where the costs of sending written notice of the Member proposal and the text of any proposed resolution are required to be met by the proposing Member, the proposing Member must, on giving notice to the Board, deposit with the Mutual or tender to the Mutual a sum sufficient to meet those costs.

### **Minutes**

- 5.51 The Board must ensure that minutes are kept of all proceedings at meetings of Members.
- 5.52 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

### **Other**

- 5.53 The provisions of the First Schedule to the Act as modified by section 21(6) of the Mutual Act, which govern proceedings at meetings of Members, apply subject to this clause 5.

## **6 Directors' duties**

### **Duties of Directors**

- 6.1 A Director of the Mutual, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Mutual.
- 6.2 A Director must exercise a power for a proper purpose.
- 6.3 A Director of the Mutual must not act, or agree to the Mutual acting, in a manner that contravenes the Mutual Act or this Constitution.
- 6.4 A Director of the Mutual must not:
- 6.4.1 agree to the business of the Mutual being carried on in a manner likely to create a substantial risk of serious loss to the Mutual's creditors; or
  - 6.4.2 cause or allow the business of the Mutual to be carried on in a manner likely to create a substantial risk of serious loss to the Mutual's creditors.

- 6.5 A Director of the Mutual must not agree to the Mutual incurring an obligation unless the Director believes at that time on reasonable grounds that the Mutual will be able to perform the obligation when it is required to do so.
- 6.6 A Director of the Mutual, when exercising powers or performing duties as a Director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances considering, but without limitation:
- 6.6.1 the nature of the Mutual;
- 6.6.2 the nature of the decision; and
- 6.6.3 the position of the Director and the nature of the responsibilities undertaken by him or her.
- 6.7 In discharging their duties under this Constitution, the Mutual Act and the general law, the Directors or other officers of the Mutual:
- 6.7.1 will include in their consideration the following factors:
- (a) the likely consequences of any decision or act of the Mutual in the long term;
  - (b) the interests of the Mutual's employees;
  - (c) the need to foster the Mutual's business relationships with suppliers, customers and others;
  - (d) the impact of the Mutual's operations on the community and the environment;
  - (e) the desirability of the Mutual maintaining a reputation for high standards of business conduct;
  - (f) the interests of the Members;
  - (g) the ability of the Mutual to create an overall positive impact on society and the environment; and
  - (h) the financial viability of the Mutual,
- 6.7.2 and need not give priority to a particular factor referred to in clause 6.7.1 over any other factor (included in clause 6.7.1 or otherwise).

#### **Reliance on information and advice**

- 6.8 Subject to clause 6.9, a Director of the Mutual, when exercising powers or performing duties as a Director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- 6.8.1 an employee of the Mutual or any Subsidiary whom the Director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
  - 6.8.2 a professional adviser or expert in relation to matters which the Director believes on reasonable grounds to be within the person's professional or expert competence;
  - 6.8.3 any other Director or committee of Directors upon which the Director did not serve in relation to matters within the other Director's or the committee's designated authority.
- 6.9 Clause 6.8 applies to a Director only if the Director:
- 6.9.1 acts in good faith;
  - 6.9.2 makes proper inquiry where the need for inquiry is indicated by the circumstances; and
  - 6.9.3 has no knowledge that such reliance is not warranted.

## **7 Self-interest transactions**

### **Interested Directors**

- 7.1 A Director of the Mutual must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Mutual, cause to be entered in the interests register and disclose to the Board:
  - 7.1.1 if the monetary value of the Director's interest can be quantified, the nature and monetary value of that interest; or
  - 7.1.2 if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- 7.2 A general notice entered in the interests register or disclosed to the Board to the effect that a Director is a member, director, officer or trustee of another named association or company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that association or company or person, is a sufficient disclosure of interest in relation to that transaction.
- 7.3 A transaction entered into by the Mutual in which a Director of the Mutual is interested may be avoided by the Mutual at any time before the expiration of three months after the transaction is disclosed to all the Members (whether by means of the Mutual's Annual Report or otherwise).
- 7.4 A transaction cannot be avoided if the Mutual receives fair value under it.
- 7.5 Nothing in clauses 7.1 and 7.3 applies in relation to:

- 7.5.1 remuneration or any other benefit given to a Director in accordance with clauses 10.1 and 10.2; or
  - 7.5.2 an indemnity or insurance provided in accordance with clauses 11.1 to 11.6.
- 7.6 Subject to the Mutual Act, Members may, by Ordinary Resolution, ratify or approve any act or omission of a Director or the Board.

#### **Actions by interested Directors**

- 7.7 A Director of the Mutual who is interested in a transaction entered into, or to be entered into, by the Mutual, may not vote on a matter relating to the transaction nor be counted for the purposes of consideration of that matter as amongst the Directors present at the meeting for the purpose of a quorum but may:

- 7.7.1 attend the meeting;
- 7.7.2 sign a document relating to the transaction on behalf of the Mutual; and
- 7.7.3 do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director were not interested in the transaction.

- 7.8 Despite the preceding restrictions, a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which that Director is interested if the matter is one, in respect of which:
- 7.8.1 the Director's interest is solely as a Customer in the ordinary course of the Mutual's business on usual terms; or
  - 7.8.2 pursuant to an express provision of the Mutual Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

#### **Use of company information**

- 7.9 A Director of the Mutual who has information in his or her capacity as a Director or employee of the Mutual, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- 7.9.1 for the purposes of the Mutual;
  - 7.9.2 as required by law;
  - 7.9.3 in accordance with clause 7.10 of this Constitution; or
  - 7.9.4 in complying with clause 7.1 of this Constitution.



### **Disclosure and use of information generally**

- 7.10 A Director of the Mutual may disclose, make use of, or act on the information referred to in clause 7.9 if:
- 7.10.1 particulars of the disclosure, use, or the act in question are entered in the interests register;
  - 7.10.2 the Director is first authorised to do so by the Board; and
  - 7.10.3 the disclosure, use, or act in question will not, or will not be likely to, prejudice the Mutual.

## **8 Appointment and removal of Directors**

### **Minimum number**

- 8.1 The minimum number of Directors is five. The maximum number of Directors is nine. Subject to these limitations the number of Directors to hold office may be fixed from time to time by the Board.

### **Majority of Board to be Members**

- 8.2 A person who is not a Member is not eligible for appointment or election as an Appointed Director of the Mutual if, immediately after his or her appointment or election as such, the number of Member Directors would be less than a majority of the total number of Directors then in office.
- 8.3 If at any time the number of Member Directors is reduced below a majority of the total number of Directors in office, the Board shall ensure (whether by exercising its powers under clause 8.17, 8.23 or otherwise) that within two months of the date of that reduction, sufficient Member Directors are appointed so that a majority of the total number of Directors then in office are Members.
- 8.4 Provided clauses 8.2 and 8.17 are complied with, the Board shall, in its sole discretion, designate whether the seat on the Board will be filled by either a Member Director or an Appointed Director.

### **Appointment of Member Directors**

- 8.5 Other than those Directors holding office pursuant to the provisions of the Mutual Act or this Constitution, all Member Directors must be appointed by an Ordinary Resolution.
- 8.6 In the event that there are more Member Director candidates than there are vacancies, there will be a contested election at the next annual meeting. The Board, in its sole discretion, will set the process by which the election is conducted.

### **Consent and qualification of Directors**

- 8.7 A person must not be appointed a Director of the Mutual unless he or she has consented in writing to be a Director and has certified that he or she is not disqualified from being appointed or holding office as a Director of the Mutual and meets all

relevant regulatory requirements including, but not limited to, the criteria set out in the Fit & Proper Policy.

#### **De facto Member Directors**

- 8.8 Any person who controls (either individually or jointly) a registered Member body corporate will be treated as being a de facto Member of the Mutual and will be eligible to be appointed as a Member Director of the Board.
- 8.9 Before a person can be appointed as a Member Director in accordance with clause 8.8, the Member body corporate must provide written notice to the Mutual confirming that the Member body corporate is controlled by the person. Upon receipt of written notice under this clause 8.9, the Board may rely on such notice as satisfactory and reliable confirmation that that person controls the Member and is eligible to be appointed a Member Director.
- 8.10 For the purposes of clauses 8.8 and 8.9, 'control' will have the same meaning given to it by section 7 of the Act.

#### **Rotation**

##### **Member Director retirements**

- 8.11 At the annual meeting in every year, one third of the Member Directors immediately prior to that meeting or if the number is not a multiple of three, then rounded down to the nearest whole number (which shall not be less than one), shall retire from office. A retiring Member Director shall be eligible for re-election without any need for nomination unless disqualified pursuant to clause 8.16.
- 8.12 A retiring Member Director shall continue to hold office until he or she is re-elected or, if he or she is not re-elected, until the end of the meeting at which he or she retires, or any adjournment thereof. Where a meeting elects a Member Director, the elected Member Director shall be elected with effect from the end of the meeting or any adjournment thereof.

##### **Order of retirement**

- 8.13 The Board may set a policy for the order of retirement for Member Directors, provided that:
- 8.13.1 such policy is consistent with clauses 8.11 and 8.12;
  - 8.13.2 the policy provides for each Member Director to retire at least once in each four year period from their election or re-election (as applicable); and
  - 8.13.3 such policy is otherwise consistent with this Constitution, the Act, the Mutual Act and any other relevant legislation.
- 8.14 At any time that there is no such policy as described in clause 8.13, the Member Directors to retire under clause 8.11 shall be those who have been longest in office since their last election or appointment but shall exclude any Appointed Directors (as defined in clause 8.17). As between individuals who became Member Directors on the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot.

### **Tenure**

- 8.15 The Board may set policies (binding or otherwise) on Director tenure and other Board protocols provided such policies are consistent with the Constitution, the Act, the Mutual Act and any other relevant legislation.

### **Vacation of office**

- 8.16 The office of Director is vacated if the person holding that office:
- 8.16.1 resigns by signing a written notice of resignation and delivering it to the address for service of the Mutual, such notice to be effective when it is received at that address or at a later time specified in the notice;
  - 8.16.2 becomes disqualified from being a Director pursuant to the Mutual Act;
  - 8.16.3 dies; or
  - 8.16.4 is absent from meetings of the Board continuously for the space of three months without special leave of absence from the Board.

### **Appointment of Directors by Board**

#### **Appointed Directors**

- 8.17 Provided the maximum number of Directors authorised by clause 8.1 will not be exceeded and the number of Member Directors remains a majority of the total number of Directors, the Board may appoint up to three qualified persons to hold office as a Director until the next annual meeting. Each such person (to be known as an 'Appointed Director'):
- 8.17.1 need not be a Member; and
  - 8.17.2 must have skills, qualifications or experience which the Board considers will complement those of the other Directors and be of benefit to the Mutual.
- 8.18 An Appointed Director shall hold office as Director for such period not exceeding three years, as the Board may by resolution determine, but cannot hold office after the end of the first annual meeting following their appointment unless the Members have ratified the Appointed Director's appointment by Ordinary Resolution.
- 8.19 In the event that an Appointed Director's appointment is not ratified by Ordinary Resolution at the annual meeting, the resulting vacancy created on the Board may only be filled by another Appointed Director appointed under clause 8.17. For the avoidance of doubt, if an Appointed Director's appointment is not ratified by Ordinary Resolution at an annual meeting no Member Director can fill the resulting vacancy on the Board.
- 8.20 The Board may at the end of any appointment, re-appoint the Appointed Director. Every such re-appointment is subject to clause 8.18.
- 8.21 In addition to the ways by which the office of Director may be vacated pursuant to clause 8.16, the office of Appointed Director is vacated if the person holding that office is removed from office by ordinary resolution of the Board.

- 8.22 Appointed Directors shall not be:
- 8.22.1 taken into account in determining the number of Directors to retire by rotation at an annual meeting; or
  - 8.22.2 counted as a Director retiring for the purpose of clause 8.11,
- but in all other respects will be regarded as a Director.

#### **Casual Member Director vacancies**

- 8.23 Where a Member Director ceases to hold office by virtue of the vacation of office pursuant to clause 8.16 or where for any reason the maximum number of Directors authorised by clause 8.1 have not been appointed or elected, or there is not a majority of Member Directors, the continuing Directors shall have power at any time thereafter to appoint any other qualified person (provided they are a Member) to hold office as a Member Director; until the next annual meeting. That appointed Member Director shall be eligible to stand for election at that next annual meeting but shall not be:
- 8.23.1 taken into account in determining the number of Member Directors to retire by rotation at that meeting; and
  - 8.23.2 counted as a Member Director retiring at that meeting for the purpose of clause 8.11.

#### **Members may nominate a Member as a Member Director**

- 8.24 Any Member may nominate themselves or any other Member for appointment as a Member Director by giving a notice (including by email from a verified Member address) of the proposal to the Board.
- 8.25 The Board may set the period during which nomination notices may be received (**Nomination Period**) provided notification of this period is communicated to Members. The Nomination Period must be at least 20 Business Days in duration on an annual basis.
- 8.26 If no Nomination Period is set, a nomination notice is only valid if received 30 or more Business Days before the last day on which notice of the relevant meeting of Members is required to be given by the Board, or such shorter period as fixed by the Board.
- 8.27 Statements supporting a nomination pursuant to clause 8.24 may be provided as follows:
- 8.27.1 The Member Director candidate may provide a written statement of not more than 300 words in support of their election.
  - 8.27.2 At the sole discretion of the Board, the Member Director candidate may submit a video recording of a duration determined by the Board in support of their election.

- 8.27.3 If a video recording is submitted pursuant to clause 8.27.2, the Board may include the recording, or a portion of it, on the Mutual's website, and take all reasonable steps to ensure that recording or that portion is available on any other website that operates in support of the election.
- 8.27.4 The Board must include, in the notice of meeting that includes the Member's nomination, the statement (or a summary of it), and a link to any website or similar hosting a recording (or portion of it), provided pursuant to this clause 8.27.
- 8.28 The Board is not required to include in or with the notice of meeting, nor make available on any website, any part of a statement or recording prepared pursuant to clause 8.24 or clause 8.27 which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious.

## **9 Directors' meetings**

### **Chairperson**

- 9.1 The Directors shall elect one of their number as chairperson of the Board to hold office until he or she dies or resigns or until the Directors elect a chairperson in his or her place.
- 9.2 If no chairperson is elected, or if at a meeting of the Board the chairperson is not present within 30 minutes after the time appointed for the meeting, the Directors present shall choose one of their number to be chairperson of the meeting.

### **Notice of meeting**

- 9.3 A Director or, if requested by a Director to do so, an employee of the Mutual or of any Subsidiary, may convene a meeting of the Board by giving notice in accordance with clause 9.4.
- 9.4 Not less than five days' written notice of a meeting of the Board must be given either by hand, pre-paid post or electronic mail to every Director. The notice must include the date, time and place of the meeting, the instructions for holding the meeting via teleconference or other audio and visual communication, and the matters to be discussed at the meeting.
- 9.5 An irregularity in the notice of a meeting or a failure to give notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors agree to the waiver.

### **Methods of holding meetings**

- 9.6 A meeting of the Board may be held:
- 9.6.1 by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 9.6.2 by means of audio, or audio and visual, communications that permit all Directors participating and constituting a quorum to simultaneously hear

each other during the meeting. A Director participating by such means is deemed to be present at the meeting.

- 9.7 Where a meeting is held pursuant to clause 9.6.2, any irregularities in proceedings, including, but not limited to Directors losing connection to the meeting, shall not invalidate any of the proceedings.

### **Quorum**

- 9.8 Until otherwise determined by the Board, a quorum for a meeting of the Board, other than an adjourned meeting, shall be at least one half of all the Directors who, for the time being, are in office and are entitled to vote, and such quorum comprises a majority of Directors who are Members.

9.8.1 No business may be transacted at a meeting of the Board if a quorum is not present.

9.8.2 If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting shall then stand adjourned for seven days, or for another period if agreed to by a total number of Directors that would constitute a quorum. The quorum for an adjourned meeting of the Board shall be those present.

### **Voting**

9.9 Every Director has one vote.

9.10 The chairperson is entitled to a casting vote.

9.11 A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.

9.12 Any Director who abstains from voting shall be deemed not to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to sign any Director's Certificates required under the Mutual Act.

### **Minutes**

9.13 The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings of the meeting.

### **Unanimous resolution**

9.14 A resolution in writing, signed or assented to by letter, email or other written form by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

9.15 A resolution pursuant to clause 9.14 may consist of several documents (including electronic or other similar means of communication) in like form each signed or assented to by one or more Directors.

- 9.16 A copy of any such resolution must be entered in the minute book of Board proceedings.

**Other**

- 9.17 The provisions in clause 9 of this Constitution replace those contained in the Third Schedule to the Act.
- 9.18 Except as provided in this Constitution, the Board may regulate its own procedure.

**10 Remuneration and other benefits**

- 10.1 In circumstances deemed to be exceptional by the Board, it may authorise the:
- 10.1.1 payment of remuneration or the provision of other benefits by the Mutual to a Director for services in any capacity other than as a Director of the Mutual or any Subsidiary of the Mutual;
  - 10.1.2 payment by the Mutual to a Director or former Director of compensation for loss of office other than as a Director of the Mutual or any Subsidiary of the Mutual;
  - 10.1.3 entering into of a contract to do any of the things set out in clauses 10.1.1 and 10.1.2,
- if the Board is satisfied that to do so is fair to the Mutual.
- 10.2 If a payment, benefit or contract is authorised under clause 10.1:
- 10.2.1 the Board must ensure that particulars thereof are forthwith entered in the interests register; and
  - 10.2.2 Directors who vote in favour thereof must sign a certificate stating that, in their opinion, it is fair to the Mutual, and the grounds for that opinion.

**Member approval of Director remuneration**

- 10.3 No remuneration shall be paid by the Mutual to a Director in his or her capacity as a Director of the Mutual or any Subsidiary of the Mutual, and no compensation for loss of office of Director shall be paid by the Mutual to a Director or former Director of the Mutual or any Subsidiary of the Mutual, unless authorised by Ordinary Resolution. Remuneration may be expressed as:
- 10.3.1 an amount per annum payable to all Directors taken together; or
  - 10.3.2 an amount per annum payable to any person who holds the office of Director or chairperson.
- 10.4 If remuneration is expressed in accordance with clause 10.3.1, then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Mutual to pay to the additional Director or

Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson) of the Mutual.

- 10.5 No resolution which proposes an increase to the amount of remuneration or compensation for loss of office fixed pursuant to a previous resolution shall be approved at a meeting of Members unless notice of the amount of the increase has been given in the notice of meeting.

#### **Expenses and special remuneration**

- 10.6 The Directors shall be entitled to be paid reasonable travelling, accommodation and other expenses incurred in relation to the governance of the Mutual. The Board may award special remuneration to any Director in undertaking any work additional to that expected of the other Directors. Directors' remuneration for work not in the capacity of a Director may be approved by the Directors without Member approval.

#### **Payments in arrears and pro-rata**

- 10.7 Notwithstanding anything contained in this Constitution, any payments made to a Director under clause 10.3 must be paid in arrears. Any changes to remuneration approved by the Membership will apply to the payment period in which the change was approved.
- 10.8 Any payments made to a Director under clause 10.3 shall be made on a pro-rata basis from:
- 10.8.1 the date of the relevant Director's appointment or election; or
  - 10.8.2 if an Ordinary Resolution is passed under clause 10.3 while a Director is in office, from the date specified in that Ordinary Resolution, or if no such date is specified then the date of that Ordinary Resolution.

### **11 Indemnity and insurance**

- 11.1 Except as provided in clauses 11.2 to 11.6, the Mutual must not indemnify, or directly or indirectly effect insurance for, a Director or employee of the Mutual or a Related Company in respect of:
- 11.1.1 liability for any act or omission in his or her capacity as a Director or employee; or
  - 11.1.2 costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability.
- 11.2 The Mutual shall indemnify a Director or employee of the Mutual or a Related Company for any costs incurred by him or her in any proceeding:
- 11.2.1 that relates to liability for any act or omission in his or her capacity as a Director or employee; and
  - 11.2.2 in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.



- 11.3 The Mutual shall indemnify a Director or employee of the Mutual or a Related Company in respect of:
- 11.3.1 liability to any person other than the Mutual or a Related Company for any act or omission in his or her capacity as a Director or employee; or
  - 11.3.2 costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability,
- not being criminal liability or liability in respect of a breach, in the case of a Director, of the duty specified in clause 6.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Mutual or Related Company.
- 11.4 The Mutual may, with the prior approval of the Board, effect insurance for a Director or employee of the Mutual or a Related Company in respect of:
- 11.4.1 liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee;
  - 11.4.2 costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
  - 11.4.3 costs incurred by that Director or employee in defending any criminal proceedings in which he or she is acquitted.
- 11.5 The Directors who vote in favour of authorising the effecting of insurance under clause 11.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Mutual.
- 11.6 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Mutual or a Related Company are forthwith entered in the interests register.

## **12 Method of contracting**

- 12.1 A contract or other enforceable obligation may be entered into by the Mutual as follows:
- 12.1.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Mutual in writing signed under the name of the Mutual by:
    - (a) two or more Directors of the Mutual;
    - (b) one or more attorneys appointed by the Mutual in accordance with the Mutual Act; or
    - (c) a Director and an authorised person of the Mutual or a Subsidiary of the Mutual, or any two authorised persons of the Mutual or a Subsidiary of the Mutual, where the authorised person is authorised to enter into obligations on behalf of the Mutual and to

sign documents that are required by law to be by deed. The signature of authorised persons must be witnessed;

- 12.1.2 an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Mutual in writing by a person acting under the Mutual's express or implied authority;
- 12.1.3 an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Mutual in writing or orally by a person acting under the Mutual's express or implied authority.

### **13 Auditor**

- 13.1 The Mutual must at each annual meeting (subject to the Mutual Act), appoint an auditor to:
  - 13.1.1 hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
  - 13.1.2 audit the financial statements of the group comprising the Mutual and its subsidiaries for the accounting period next after the meeting.
- 13.2 The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

### **14 Alteration of Constitution - change of name**

- 14.1 Subject to the Act, this Constitution may be altered at any time by Special Resolution.
- 14.2 An application to change the name of the Mutual is not an amendment of this Constitution for the purposes of this Constitution or the Mutual Act, and may be made with the approval of the Board.

### **15 Accounts**

- 15.1 The Board must ensure that the group comprising the Mutual and its subsidiaries prepares financial statements that comply with all relevant laws.

### **16 Manner of service on Members and creditors**

- 16.1 A notice, statement, report, accounts, or other document to be sent to a Member, Customer or creditor who is a natural person may be:
  - 16.1.1 given to that person in accordance with the Mutual Act;
  - 16.1.2 delivered to that person;

- 16.1.3 posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
  - 16.1.4 sent by email to the email address used by that person and provided to the Mutual for communication purposes.
- 16.2 If an email address is provided to the Mutual by a Member, Customer or creditor for the purposes of communication, that Member, Customer or creditor is deemed to consent to the sending of any notice, statement, report, accounts, or other document by email in accordance with clause 16.1.4.
- 16.3 A notice, statement, report, accounts, or other document to be sent to a Member, Customer or creditor that is a company or an overseas company may be sent by any of the methods of serving documents permitted by the Mutual Act, and by any form of electronic communication permitted by Part 4 of the Contract and Commercial Law Act 2017. If a Member or Customer has provided the Mutual with an email address for communication purposes, that Member or Customer will be deemed to have consented to the sending of any notice, statement, report, accounts or other document via electronic communication.
- 16.4 A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:
- 16.4.1 given to that person in accordance with the Mutual Act;
  - 16.4.2 delivered to a person who is a principal officer of the body corporate;
  - 16.4.3 delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate;
  - 16.4.4 delivered in such manner as the Court directs;
  - 16.4.5 delivered in accordance with an agreement made with the body corporate;  
or
  - 16.4.6 posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time.

## **17 Removal from the register**

- 17.1 Those Members entitled to vote and voting on the question by Special Resolution, or the Board, or any person or persons authorised by the Board may, subject to section 318 of the Act, request the removal of the Mutual from the Register on the ground that:
- 17.1.1 the Mutual has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Mutual Act; or

- 17.1.2 the Mutual has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under the Mutual Act for an order putting the Mutual into liquidation.

## **18 Registered office and address for service**

- 18.1 Subject to the Mutual Act, the Board may change the registered office of the Mutual at any time.
- 18.2 Subject to the Mutual Act, the Board may change the address for service of the Mutual at any time.

