

Co-operatives National Law (Victoria)

ESTONIAN HOUSE CO-OPERATIVE LIMITED

The existing rules of the Co-operative be rescinded and the new set of rules be adopted as the current rules of the Co-operative.

I certify the registration of the foregoing alteration of the rules of **ESTONIAN HOUSE CO-OPERATIVE LIMITED** by way of the changes to the rules this 28 November 2016.



Deputy Registrar of Co-operatives

Model rules for a non-distributing co-operative with share capital

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Guide to the model rules

1. Introduction

This guide summarises the purpose and process for model rules under the Co-operatives National Law and the Co-operatives National Regulations.

A co-operative is governed primarily by the Co-operatives National Law and the Co-operatives National Regulations as applied in this jurisdiction. In addition, its operations and its relationship with its members are governed by its rules, which are a contract between the co-operative and its members as well as between each member.

A co-operative is required to have a set of rules, which address each of the topics set out in Schedule 1 to the Co-operatives National Law. Other provisions of the Law or the Co-operatives National Regulations may also specify that particular matters may or must be set out in the rules.

These model rules apply to a non-distributing co-operative with share capital. A non-distributing co-operative is a co-operative that is prohibited from giving returns or distributions on surplus or share capital (see section 19 of the Co-operatives National Law). There are separate sets of model rules for a non-distributing co-operative without share capital and for a distributing co-operative.

2. What are model rules?

The Co-operatives National Regulations contain a set of rules that may be used by a general co-operative. These rules are called “model rules” because they are drafted to ensure that they include all matters that are required to be included in a co-operative’s rules. A co-operative is not required to use the model rules, but instead it may prepare its own rules or it may use some of the model rules and draft others to complete its rules so that they comply with the Co-operatives National Law.

General co-operatives engage in a wide range of activities and the model rules are not intended to deal with all aspects of the business or activities of a general co-operative, but they will provide a core set of rules. A co-operative will need to consider whether each of the model rules suits its activities and either adapt the rule or prepare its own rule on a particular topic.

It is important to note that a co-operative’s rules must be approved by the Registrar. The model rules are not complete as they require additional information to be inserted or deleted by a co-operative, but, once completed with the information indicated, they should be in a form ready for approval by the Registrar.

If a co-operative chooses to prepare its own rules and the rules do not make provision for a matter set out in Schedule 1 to the Co-operatives National Law, then the Registrar may insert the relevant model rule to complete the co-operative's rules.

3. Model rules may change

The model rules are part of the Co-operatives National Regulations, and like the Regulations they may change if it is considered appropriate at some future time. If a co-operative wishes, it may adopt the model rules in a form that is static. That is, the model rules as adopted will not change unless the co-operative makes a change in the manner authorised under the Co-operatives National Law. Alternatively, the co-operative may adopt the model rules as they are from time to time. If this is done, then any future changes to the model rules will automatically change without the need for the co-operative to undertake any process to amend its rules.

Potential changes to model rules will be part of the process for changing the Co-operatives National Regulations and subject to public notice before any changes are made.

4. Instructions for using the model rules

The model rules are to be completed in accordance with any requirement indicated in Schedule 7 to the Co-operative National Regulations as to how the rules are to be completed (whether by inserting a specified detail or other information or by striking out any words or other matter, or otherwise).

A row of dots in a model rule indicates that a relevant detail or other information is required to be inserted before the rule is made.

References to the CNL or a provision of the CNL in these model rules is a reference to the principal provision(s) of the Co-operatives National Law as applied in this jurisdiction. The meaning or application of these model rules may be affected by other provisions of the Co-operatives National Law or other Commonwealth, State or Territory laws, as the case may be.

These notes and any other notes in the model rules do not form part of the model rules.

Part 1 Preliminary

1 Application of these rules

These rules are the rules of the Estonian House Co-operative Ltd

2 Definitions

In these rules:

ballot paper means a ballot paper in paper or electronic form.

basic minimum financial statements means the financial statement required of a small co-operative under the National Regulations.

board means the board of the co-operative.

CNL is a reference to the Co-operatives National Law as applying in this jurisdiction.

director means a director of the co-operative.

member means a member of the co-operative.

member director and **non-member director**—see section 174 of the Law and rule 45.

standard postal times means the times when properly addressed and prepaid letters would be delivered in the ordinary course of post.

the co-operative means the Estonian House Co-operative Ltd.

the Law means the Co-operatives National Law as applying in this jurisdiction.

the National Regulations means the Co-operatives National Regulations as applying in this jurisdiction.

Except so far as the contrary intention appears in these rules, words and expressions used in these rules have the same meanings as they have, from time to time, in the Law or relevant provisions of the Law.

3 Name of the co-operative (CNL ss220–222 & 224)

The name of the co-operative is Estonian House Co-operative Ltd.

Part 2 Membership

Division 1 Membership generally

4 Active membership provisions (CNL ss112(2), 144, 148 & 156–166)

(1) Primary activity

(2) For the purposes of Part 2.6 of the Law, the primary activities of the co-operative are:

Ownership and management of real estate for the benefit and use of the community of the community particularly of the property being a clubhouse situated at 41-45 Melville Road, Brunswick West for the use of Estonian origin and clubs and organisations associated with them for cultural and social activities and functions.

(3) Active Membership Requirements

In order to be an active member for a particular calendar year a member must attend one function held at the clubhouse situated at 41 – 45 Melville Rd, Brunswick West during that year.

Note. Failure to maintain active membership may lead to cancellation of membership (see rule 21).

5 Qualifications and shareholding required for membership (CNL s112)

(1) A person qualifies for membership of the co-operative if the person is able to use or contribute to the services of the co-operative.

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

(3) Every member must hold at least one share. A member may not hold shares which exceed the nominal value of \$15,000 nor hold more than one – fifth of the shares.

6 Entry fees and transfer fees (CNL s124)

(1) The entry fee for an application for membership is achieved through purchase of a share(s) valued at \$10.00 per share.

(2) The regular transfer fee is \$10.00 or at the board's discretion.

7 Membership applications

- (1) Applications for membership must be lodged at the registered office in the application form approved by the board, and should be accompanied by payment for allotment of the minimum number of shares in the co-operative as specified in rule 6.
- (2) Every application must be considered by the board.
- (3) If the board approves the application, the applicant's name and any other information required under the Law must be entered in the register of members within 28 days of the board's approval.
- (4) The applicant must be notified in writing of the entry in the register and the applicant is then entitled to the privileges attaching to membership.
- (5) The board may, at its discretion, refuse an application for membership.
- (6) The board need not assign reasons for the refusal. On refusal any amounts accompanying the application for membership must be refunded within 28 days without interest.
- (7) The applicant for membership becomes entitled to exercise the rights of membership when the member's name appears in the register of members and the member has paid to the co-operative the relevant fees and amounts set out in rule 6

8 Cessation of membership (CNL s117)

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

- (1) if the membership ceases in any circumstances specified in section 117 of the Law;
- (2) on the death of the member;
- (3) if the member's total shareholding is transferred to another person and the transferee is registered as the holder of the shareholding;
- (4) if the member's total shareholding is forfeited under the Law or these rules;
- (5) if the member's total shareholding is purchased by the co-operative under the Law or these rules;
- (6) if the member's total shareholding is sold by the co-operative under any power in the Law or these rules and the purchaser is registered as shareholder in the member's place.
- (7) if the amount paid up on the member's share is repaid to the member in accordance with the provisions of these rules.
- (8) in the case of a member that is an organisation, if the organisation is dissolved.
- (9) if the contract of membership is rescinded on the grounds of misrepresentation or mistake.
- (10) on notice in writing given by the member to the Secretary, of the member's resignation from membership; or
- (11) If the member becomes bankrupt and

- i) the trustee of the member's estate disclaims any debt, contract, duty or liability of the member with the co-operative, or
- ii) The bankrupt member or trustee is unable to pay monies due to the co-operative by the member or the trustee in his/her capacity as trustee.

9 Expulsion of members (CNL s117)

- 1) A member may be expelled from the co-operative by special resolution to the effect:
 - a. that the member has seriously or repetitively failed to discharge the member's obligations to the co-operative under these rules or a contract entered into with the co-operative under section 125 of the Law; or
 - i. that the member has acted in a way that has:
 - ii. prevented or hindered the co-operative in carrying out its primary activity or one or more of its primary activities; or
 - iii. brought the co-operative into disrepute; or
 - iv. been contrary to one or more of the co-operative principles as described in section 10 of the Law and has caused the co-operative harm.
- 2) Written notice of the proposed special resolution must be given to the member at least 28 days before the date of the meeting at which the special resolution is to be moved, and the member must be given a reasonable opportunity of being heard at the meeting.
- 3) At the general meeting when the special resolution for expulsion is proposed the following procedures apply:
 - a. at the meeting, the member must be afforded a full opportunity to be heard and is entitled to call witnesses and cross-examine witnesses called against the member;
 - b. if the member fails to attend at the time and place mentioned, without reasonable excuse, the member's alleged conduct must be considered and the co-operative may decide on the evidence before it, despite the absence of the member;
 - c. once the alleged conduct is considered, the co-operative may decide to expel the member concerned;
 - d. the co-operative must not make a decision on the alleged conduct or on expulsion, except by vote by secret ballot of the members present, in person or represented by proxy or by attorney, and entitled to vote;
 - e. a motion for the decision is not taken to be passed unless two-thirds of the members present, in person or represented by proxy or by attorney, vote in favour of the motion.

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

10 Resignation of members (CNL s117)

A member may resign from a co-operative by giving the Secretary a notice in writing in the form approved by the board.

11 Monetary consequences of expulsion or resignation (CNL s128)

In this rule **deficiency** means the amount of accumulated loss, deficiency or significant change disclosed in the last balance sheet of the co-operative, or later reported before expulsion.

- (1) If a member is expelled or resigns from the co-operative, all amounts owing by the former member to the co-operative become immediately payable in full.
- (2) The shares of an expelled or resigning member must be cancelled as at the day of expulsion or resignation, and the cancellation must be noted in the register of shares.
- (3) Subject to sub rule (5) and the written terms of a class of share issued, the co-operative must, however, pay to the expelled or resigning member the amount of capital paid up on the former member's shares at the time of expulsion or resignation (less any amount owing by the former member to the co-operative).
- (4) If a deficiency exists, an appropriate proportion of the loss, deficiency or significant change may be deducted from the amount of capital paid up on the shares of the expelled or resigning member. This is done having regard to the number of shares held by the expelled or resigning member immediately before expulsion or resignation in relation to the number of shares in the co-operative.
- (5) Subject to section 128 of the Law, payment to the expelled or resigning member of any amount owing by the co-operative to the former member: must be made at the time decided by the board but within one year from the date of expulsion or resignation; or may be applied at the time decided by the board, but within one year from the date of expulsion or resignation, in the manner set out in section 128 of the Law, if there is agreement by the

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

12 Suspension of members

- 1) The co-operative may suspend a member for not more than one year, who does any of the following:

- 1) contravenes any of these rules;

fails to discharge obligations to the co-operative, whether under these rules or a contract;

acts detrimentally to the interests of the co-operative.

In order to suspend a member, the procedure for expulsion of a member set out in rule 9 is to be followed as if references to expulsion were references to suspension.

During the period of suspension, the member:

- 2) loses any rights (except the right to vote) arising as a result of membership; and

is not entitled to a refund, rebate, relief or credit for membership fees paid, or payable, to the co-operative; and

remains liable for any fine that may be imposed.

Division 2 Dispute resolution

13 Disputes and mediation (CNL s129)

- 1) The grievance procedure set out in this rule applies to disputes under these rules between:

- 1) a member and another member; or

a member (including a former member) and the co-operative.

If a dispute arises, a party cannot commence any court or arbitration proceedings relating to the dispute unless it has complied with the provisions of this rule, except where a person seeks urgent interlocutory relief.

The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days of:

- 2) the dispute coming to the attention of each party; or

a party giving notice, to each of the other parties involved, of the dispute or grievance.

If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, the parties must, as soon as is practicable, hold a meeting in the presence of a mediator.

The mediator is, where possible, to be a person chosen by agreement between the parties, but in the absence of agreement between the parties:

- 1) for a dispute between a member and another member, a person appointed by the board;
- or

for a dispute between a member (including a former member) and the co-operative, a person appointed by the Australian Mediation Association.

The mediator may (but need not) be a member of the co-operative, unless the member is a party to the dispute.

The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

The mediator, in conducting the mediation, must:

1) give the parties to the mediation process every opportunity to be heard; and allow due consideration by all parties of any written statement submitted by any party; and ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

The mediator cannot determine the dispute.

The mediation must be confidential and without prejudice.

The costs of the mediation are to be shared equally between the parties unless otherwise agreed.

Nothing in this rule applies to any dispute as to the construction or effect of any mortgage or contract contained in any document other than these rules.

Nothing in this rule applies to any dispute involving the expulsion or suspension of a member or the imposition of a fine.

If the mediation process does not result in the dispute being resolved, each party may seek to resolve the dispute in accordance with the Law or otherwise at law.

Note. Section 130 of the Law applies if mediation does not resolve the dispute

Division 3 Members' liability

14 Fines payable by members (CNL ss56 & 126)

The board may impose on a member a maximum fine of \$ Nil for a contravention of these rules.

15 Liability of members to co-operatives (CNL ss117(2) & 121)

- 1) A member is liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges, including entry fees and regular subscriptions, payable by the member to the co-operative under these rules.
- 2) Joint members are jointly and severally liable for any amount unpaid on shares and to any such charges mentioned in sub rule (1).
- 3) On the death of a member the member's estate remains liable as the member unless the member's personal representative or some other person is registered in the member's place.

Division 4 Shares

16 Capital and shares (CNL ss76–82)

- 1) The capital of the co-operative must be raised by the issue of shares of nominal value of \$ 10.00 each.

A member must hold a minimum of \$10.00 shares in the co-operative and must not hold or have a relevant interest in more than 20% of the nominal value of issued share capital of the co-operative unless permitted to do so under section 363 of the Law.

- 2) No share is to be allotted unless 100% of the nominal value of the share has been paid.

Note. Shares may be required to be fully paid for them to be allotted or they may be partly paid provided the minimum paid up is 10%. The amount to be paid is a matter for the co-operative to determine in the light of its capital requirements. Section 78 of the Law requires there to be a minimum of 10% paid up before allotment. The remaining percentage of the share price can be paid either by predetermined subscription amounts or they may simply be subject to a call under rule 17.

- 3) A share in the co-operative does not carry a vote.
- 4) The board, on the application of a person holding shares in the co-operative, must issue to that person, without payment, a certificate under the seal of the co-operative specifying the shares held by that person and the amount paid up on those shares. However, if the shares are held jointly –
 - a) The board is not required to issue more than one share certificate in respect of those shares
 - b) The delivery of the share certificate to one joint shareholder is sufficient delivery to all.
- 5) If the board is satisfied that a share certificate issued by the co-operative is defaced, lost or destroyed, the board may issue a duplicate certificate on payment of a fee (not exceeding \$10.00) determined by the board.
- 6) The right to vote in the co-operative is attached to membership and governed by section 228 of the Law.

Note. Under section 82 of the Law, the co-operative is authorised to require members of a distributing co-operative to take up or subscribe for additional shares under a proposal approved by special resolution.

17 Calls on shares

- (1) The board may from time to time make calls on the members for any amounts unpaid on the shares of the members .
- (2) Sub-rule (1) does not apply if the terms of issue of the shares provide for the money unpaid on the shares to be paid at fixed times.
- (3) A call must not –
 - a. exceed one-quarter of the sum of the nominal value of the shares; or
 - b. be payable earlier than one month after the day fixed for the payment of the last preceding call.
- (4) Each member must, on receiving at least 14 days' notice of the time and place of payment.
- (5) A member who receives notice of a call must pay the amount of the call on the member's shares to the co-operative at the time or times and at the place specified in the notice
- (6) The directors may revoke or postpone a call.
- (7) A sum that becomes payable on a share under the terms of issue of the share is deemed for the purposes of these rules to be an amount payable on a call notified under this rule as if the time and place for payment specified in the terms of issue were the time and place for payment of the call.
- (8) The board may accept from a member all or part of the money uncalled and unpaid on shares held by the member.

18 Repurchase of members' shares (CNL ss99, 107, 109 & 118)

1) Members' shares may be repurchased by the co-operative in accordance with the Law. A member who wishes the co-operative to repurchase any shares must do so by submitting a request to the board in the following form:

I/We _____ being members of the _____ (co-operative name) and the holders of _____ (number of shares) in the co-operative that are fully/partly paid, request that the co-operative repurchase _____ (number of shares). I/We are aware of the conditions of repayment under the Co-operatives National Law or relevant Act.

Signed _____

Dated _____

Witness (name and signature) _____

The board of the co-operative must consider each request for repurchase in accordance with the Law and cancel any shares that have been repurchased.

19 Transfer of shares (CNL ss100 & 101)

- 1) The instrument of transfer of a share must be signed by or for the transferor (the giver) and the transferee (the receiver of the share).

The transferor is taken to remain the holder of the share until the name of the transferee is entered in the register of members in respect of the share.

Shares must be transferred in the following form or another form approved by the board:

I, A.B. (the transferor) of _____ in the State/Territory of _____ in consideration of the sum of \$ _____ paid to me by C.D. (the transferee), of _____ in the State/Territory of _____ transfer to the transferee the share (or shares) numbered _____ in the _____ (name of co-operative) to hold for the transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution.

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

Dated this _____ day of _____ 20 _____

Signed by _____ transferor.

In the presence of _____ witness.

Signed by _____ transferee.

In the presence of _____ witness.

- (1) A share may not be sold or transferred except:

- a. with the consent of the board, and to a person who is qualified to be admitted to membership of the co-operative under rules 4 and 5; or
- b. as otherwise provided by these rules or the Law.

- (2) The board may decline to register a transfer of shares to a person not qualified to be a member or of whom they do not approve.

- (3) The board may also decline to register a transfer of shares on which the co-operative has a lien or charge.

- (4) If the board refuses to register a transfer of shares it must send notice of the refusal to the transferee within 14 days after the day the board declined to register the transfer.
- (5) The board of the co-operative must not consent to the sale or transfer of shares that would result in more than the nominal value of shares permitted under section 363 of the Law.
- (6) The board may decline to recognise an instrument of transfer unless:
 - a. a fee of \$ 10.00 (or a smaller amount decided by the board from time to time) is paid to the co-operative for the transfer; and
 - b. the instrument of transfer is accompanied by any evidence the board may require to show the right of the transferor to make the transfer.
- (7) The board must maintain a record of all transfers made in the proper books of the co-operative.
- (8) The board may suspend the registration of transfers during the 14 days immediately before the annual general meeting in each year.

20 Effect of sale, transfer or disposal of shares (CNL ss232 & 233)

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

Division 5 Member cancellations

21 Forfeiture and cancellations—inactive members (CNL ss156–163)

- 1) The board must declare the membership of a member cancelled if:
 - a) the whereabouts of the member are not presently known to the co-operative and have not been known to the co-operative for a continuous period of at least 3 years; or
 - b) the member is not presently active and has not been active within the meaning of rule 4 in the past 3 years.

22 Forfeiture of shares (CNL s109)

- (1) A person whose shares have been forfeited under these rules or the Law remains liable to the co-operative for any amount still unpaid at the date of forfeiture in respect of those shares.
- (2) Forfeited shares must be cancelled.
- (3) If after a period of three years if a shareholder is no longer able to be contacted by the Executive of the Estonian House Co-operative, as their whereabouts are unknown, their shares will be redeemed as a donation to the Estonian House Co-operative.

23 Forfeited shares—liability of members

- 1) A person whose shares have been forfeited under these rules stops being a member if membership is conditional on the holding of the shares or membership has otherwise been cancelled under the Law.
- 2) The co-operative has set-off rights against share capital as specified in section 127 of the Law.

Division 6 Deceased or incapacitated members

24 Death of member (CNL ss93 & 102–106)

- (1) Upon the notification of the death of the member, the board must transfer the deceased member's share or interest in the co-operative to –
 - a. The executor or administrator of the deceased member, or
 - b. With the consent of the board, to a person –
 - i. Who is specified by the personal representative of the deceased member in an application under the Law
 - ii. Who is qualified to be a member in accordance with the Law and these rules.
- (2) The board may transfer the shares or interest of a deceased member to a person entitled in accordance with the Law if
 - a. The total value of the shares or interest is less than \$10,000 (or such other amount as may be prescribed by the regulations); and
 - b. There has not been a grant of administration of the estate, or probate of the will of the deceased member.
- (3) If a person is entitled in equity to a share in the co-operative, the consent of the co-operative and the holder of the share must be obtained before a person can be registered in respect of that share. The legal personal representative of a deceased member may apply to the board for a transfer of the deceased member's shares in the following form:

I, _____, am the legal personal representative of _____ (a member of the co-operative) who died on _____

Copies of my appointment as executor/administrator of the estate are attached.

I request that the board transfer all shares attaching to the membership of _____ being shares numbered _____ in the co-operative, to me.

A. I intend to hold the shares subject to the deceased member's last will and testament / letters of administration and will notify the board of any proposal to transfer the shares to any beneficiary/ies *OR*

B. I am also the beneficiary of the estate of the deceased member and I am aware of the requirements for active membership under the rules of the co-operative.

(Include any additional information to enable the board to consider whether the transferee is likely to be an active member of the co-operative.)

Dated _____

Signed by _____

Legal personal representative

In the presence of _____ witness.

- (4) If after a period of three years from date of death, where no notice or direction has been received from the executor, the shareholder will have their shares redeemed as a donation to the Estonian House Co-operative.

25 Rights and liabilities of members under bankruptcy or mental incapacity (CNL ss95, 96 & 117)

- (1) A person's membership ceases upon bankruptcy and that person's shares may be transferred to the Official Trustee in Bankruptcy and dealt with under the provisions of section 95 of the Law.

- (2) A person appointed under a law of a State or Territory to administer the estate of a member who, through mental or physical infirmity, is incapable of managing his or her affairs, may be registered as the holder of the member's shares and the rights and liabilities of membership vest in that person during the period of the appointment.
- (3) The liabilities attaching to the shares of a person under bankruptcy or mental incapacity continue in accordance with section 96 of the Law.
- (4) Upon application by a person appointed to manage the affairs of a member referred to in sub rule (2), the board may decide to suspend some or all active membership obligations if there are grounds to believe that the member's physical or mental infirmity is temporary.

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

- (1) A person becoming entitled to be a shareholder because of the death, bankruptcy or incapacity of the holder is entitled to the dividends and other advantages to which the person would be entitled if he or she were the registered holder of the share or shares. However, before being registered as a member, the person is not entitled to exercise any right conferred by membership in relation to meetings of the co-operative.
- (2) A person registered as holder of the shares of a member who has died, or is bankrupt or incapable of managing his or her affairs, has the same liabilities in relation to the share or shares as those to which the deceased, bankrupt or incapable person would have been liable if he or she had remained a member with full legal capacity.
- (3) The board has the same right to decline or to suspend registration of a share as it would have had for a transfer of a share by the bankrupt or incapacitated person before the bankruptcy or incapacity.

Division 7 Transfer of securities other than shares

27 Transfer and transmission of debentures

- 1) On the written request of the transferor (the giver) of a debenture, the co-operative must enter in the appropriate register the name of the transferee (the receiver) in the same way and on the same conditions as if the application for entry were made by the transferee.
- 2) If the co-operative refuses to register a transfer of debentures, it must, within 28 days after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
- 3) An instrument of transfer of a debenture must be executed by or on behalf of the transferor and the transferee. The transferor is taken to remain the holder of the

debenture until the debenture in the name of the transferee is entered in the register of debentures.

- 4) The board may decline to recognise an instrument of debenture and may decline to register a debenture unless:
- 5) a fee of \$ 10.00 (or a lesser amount decided by the board) is paid to the co-operative for the transfer of registration; and
- 6) the instrument of transfer is accompanied by the relevant debenture(s) and any other evidence the board reasonably requires (in particular, evidence showing the right of the transferor to make the transfer); and
- 7) any government stamp duty payable is paid.
- 8) Debentures must be transferred in the following form or in a form approved by the board:

I, A.B. (the transferor) of _____ in the State/Territory of

_____ in consideration of the sum of \$ ____ paid to me by C.D (the transferee),
of

_____ in the State of

_____ transfer to the transferee the debenture(s)

numbered _____ to be held by the transferee, the
transferee's executors, administrators and assigns, subject to any conditions on which I hold the
debenture(s) and any other conditions being terms of the transfer of the debenture(s).

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

Dated this _____ day of _____ 20 ____

Signed by _____ transferor.

In the presence of _____ witness.

Signed by _____ transferee.

In the presence _____ witness.

28 Issue of CCUs (CNL ss345–354)

- (1) The board may confer an interest in the capital of the co-operative by issuing CCUs in accordance with the Law.
- 2) Each holder of CCUs is entitled to one vote only at a meeting of the holders of CCUs.
- 3) The rights of the holders of CCUs may be varied only in the way and to the extent provided by their terms of issue and only with the consent of at least 75% of those holders of CCUs who, being entitled to do so, cast a formal vote to accept the variation at a meeting.
- 4) The holder of a CCU has, in the person's capacity as a holder of a CCU, none of the rights or entitlements of a member of the co-operative.
- 5) The holder of a CCU is entitled to receive notice of all relevant meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative.

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

29 Transfer and transmission of CCUs

- (1) Subject to subrule (2), the transfer and transmission of a CCU is to follow the same process as for a debenture under rule 27.
- (2) If the terms of issue of a CCU differ from rule 27 in respect of the manner of transfer or transmission, the terms of its issue prevail.

Part 3 General meetings, resolutions and voting

30 Annual general meeting (CNL s252)

An annual general meeting must be held each year, at a place and on a date and a time decided by the board, within 5 months after the close of the financial year of the co-operative or within the further time allowed by the Registrar.

Note. A co-operative may specify particular matters to suit the convenience of members such as time and place, if members are located in a wide geographical area.

31 Members' power to requisition a general meeting (CNL s257)

- (1) The board may, whenever it considers appropriate, call a special general meeting of the co-operative.
- (2) The board must call a general meeting of the co-operative on the requisition in writing by members who together are able to cast at least 20 % of the total number of votes able to be cast at a meeting of the co-operative.
- (3) The provisions of section 257 of the Law apply to a meeting requisitioned by members.
- (4) A member of the co-operative, who wishes to propose a resolution at a general meeting must give the co-operative written notice of the resolution.

Note. The board is not required to call a general meeting of members to consider matters that are not matters for decision by the members in general meeting.

32 Notice of general meetings (CNL ss239, 254 & 611)

- (1) At least 14 days' notice of a general meeting (not including the day on which the notice is served or taken to be served, but including the day for which notice is given) must be given.
 - a. **Note 1.** If there is to be a special resolution proposed at the meeting, there is a requirement for at least 21 days' notice of the special resolution.
 - b. **Note 2.** If there is a resolution proposed for the removal of a director, section 180 of the Law requires special notice of the resolution and 21 days notice of the meeting.
- (2) Notice must be given to each member of the co-operative and any other persons who are, under these rules or the Law, entitled to receive notices from the co-operative.
 - a. **Note.** The auditor is and, if there is a trustee for debenture holders, the trustee is entitled to notice of a general meeting.
- (3) The notice must state the place, day and hour of the meeting and include ordinary business as specified in rule 33 and, for special business, the general nature of any special business.
- (4) The notice must also include any business members have notified their intention to move at the meeting under sub rule (6) (but only if the members' notification has been made under these rules and within time).
- (5) The notice must be served in the manner provided in the Law or rule 62.
 - a. **Note 1.** Section 611 of the Law makes provision for the service of notices on members of the co-operative. Rule 62 makes additional provision for notice by electronic transmission.

- b. **Note 2.** Non-receipt of the notice does not invalidate the proceedings at the general meeting.

(6) Members who together are able to cast at least 20% of the total number of votes that are able to be cast at a meeting of the co-operative and who have a resolution to submit to a general meeting must give written notice of it to the co-operative at least 14 days before the day of the meeting.

- a. **Note.** A co-operative can limit an individual member from proposing a resolution to the general meeting by requiring that there be a minimum number of members proposing the resolution before the matter can be considered. This does not prevent an individual member from requesting that the board propose a particular resolution at the next meeting.

33 Business of general meetings

- 1) The ordinary business of the annual general meeting of a large co-operative must be:
 - a) to confirm minutes of the last preceding general meeting (whether annual or special); and
 - b) to receive from the board, auditors or officers of the co-operative:
 - i) the financial reports of the co-operative for the financial year;
 - ii) a report on the state of affairs of the co-operative; and
 - c) to approve any payments of fees to directors.
- 2) The ordinary business of the annual general meeting of a small co-operative must be:
 - a) to confirm minutes of the last preceding general meeting (whether annual or special); and
 - b) to receive from the board, auditors or officers of the co-operative:
 - i) the basic minimum financial statements for the co-operative for the financial year;
 - ii) a report on the state of affairs of the co-operative;
 - c) a directors' solvency resolution as to whether or not, in their opinion, there are reasonable grounds to believe that the co-operative will be able to pay its debts as and when they become due and payable and to approve any payments of fees or to directors.
- 3) The annual general meeting may also transact special business of which notice has been given to members under these rules.
- 4) All business of a general meeting, other than business of the annual general meeting that is ordinary business, is special business.

34 Quorum at general meetings

- 1) An item of business cannot be transacted at a general meeting unless a quorum of members is present when the meeting is considering the item.

- 2) Subject to sub-rule (3) the quorum of the co-operative is 7 members entitled to vote at a meeting of the co-operative plus –
 - a. If the active membership of the co-operative exceeds 50 but does not exceed 200, 1 additional member for each 10 members after the first 50 active members; and
 - b. If the active membership of the co-operative exceeds 200, the additional members referred to in paragraph (A) and 1 additional member for each 50 members after the first 200 members
- 3) If a quorum is not present within half an hour after the appointed time for a meeting, the meeting, if called on the requisition of members, must be dissolved. In any other case it must be adjourned to the same day, time and place in the next week.
- 4) If a quorum is not present within half an hour after the time appointed for an adjourned meeting, the meeting must be abandoned.

35 Chairperson at general meetings

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

36 Standing orders at meetings

- 1) Subject to sub rule (3) the following standing orders must be observed at general meetings of the co-operative –

- a) The mover of a proposition must not speak for more than 10 minutes. Subsequent speakers are 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.
 - b) If an amendment to an original proposition is proposed, no second amendment may be considered until the first amendment is dispensed of.
 - c) If an amendment is carried, the proposition as so amended displaces the original proposition and itself be amended.
 - d) If an amendment is defeated, then a further amendment may be moved to the original proposition. However, only one amendment may be submitted to the meeting for discussion at one time.
 - e) The mover of every original proposition, but not of an amendment, has the right to reply. Immediately after this the question must be put from the chair. No other member may speak more than once on the same question, unless permission is given for an explanation, or the attention of the chairperson is called to a point of order.
 - f) Propositions and amendments must be submitted in writing, if requested by the chairperson.
 - g) Any discussion may be closed by a resolution "that the question be now put" being moved, seconded and carried. That resolution must be put to the meeting without debate.
- 2) Any member, or visitor invited to attend the meeting by the board, may speak on any issue at a meeting with permission of the chairperson subject to any conditions imposed by the chairperson.
 - 3) The standing orders may be suspended for any period by ordinary resolution.

37 Attendance and voting at general meetings (CNL ss228 & 256)

- 1) The right to vote attaches to membership and not shareholding.
- 2) A member of the co-operative is not entitled to vote at a meeting of the co-operative unless that person is an active member of the co-operative.
- 3) Subject to the Law and this rule, every member of the co-operative has only one vote at a meeting of the co-operative.
- 4) A member of a co-operative who is under 18 years of age is not entitled to vote.
- 5) In the case of joint membership
 - a) the joint members have only one vote between them; and
 - b) that vote may be exercised by the member who appears first in the register of members unless other joint members otherwise direct.
- 6) Subject to the Law and these rules, a question for decision at a general meeting, other than a special resolution, must be determined by a majority of members present at the meeting and voting.
- 7) Subject to rule 5), unless a poll is demanded by at least 5 members, a question for decision at a general meeting must be determined by a show of hands.

- 8) A resolution, other than a special resolution, must be decided by simple majority.

Note. The requirements for a special resolution are in section 239 of the Law.

- 9) A poll on the election of a chairperson or on the question of adjournment must be taken immediately and without debate.
- 10) The result of the vote must be entered in the minute book.

38 Voting on a show of hands (CNL ss234 & 256)

- 1) On a show of hands at a general meeting,
 - a) each member present; or
 - b) represented by a non-member acting under a power of attorney; or
 - c) represented by a non-member appointed under the provisions of the Law; or
 - d) represented by a proxy (but only if proxies are allowed under these rules);may exercise only one vote.

39 Voting on a poll

- (1) On a poll called at a general meeting, each member:
 - a) present; or
 - b) represented by a person acting under a power of attorney; or
 - c) represented by a person appointed under the provisions of the Law; or
 - d) represented by a proxy (but only if proxies are allowed under these rules);has one vote.

Note 1. A person can hold an unlimited number of proxies unless the rules restrict the number of proxies any one person can hold. If the vote on a show of hands is likely not to represent the views of the members who have given a proxy, a poll may be demanded. Section 256(2) of the Law provides that a question is to be decided by a poll if a poll is required by the chairperson of the meeting or by any 5 members present at the meeting or represented at the meeting by proxy.

Note 2. Most decisions are made by ordinary resolution, but in certain cases the Law requires a special resolution.

40 Determining the outcome where equality of votes (s228)

- 1) This rule applies where the votes in favour and against a resolution are equal.

- 2) In the case of an equality of votes at a meeting of the co-operative, 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, they may exercise a second or casting vote.

41 Proxy votes (s229)

- (1) Voting may be by proxy at a general meeting.
- (2) The instrument appointing a proxy must be in writing signed by the appointer or the appointer's attorney properly authorised in writing.
- (3) An instrument appointing a proxy may direct the way the proxy is to vote in relation to a particular resolution and, if an instrument of proxy directs, the proxy is not entitled to vote on the resolution other than as directed in the instrument.
- (4) A person may be appointed as a proxy by more than one member.
- (5) An instrument appointing a proxy is not valid until the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of the power or authority, are deposited, at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the registered office of the co-operative or at another place specified for the purpose in the notice calling the meeting.
- (6) A vote given in accordance with an instrument of proxy or a power of attorney is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the co-operative at the registered office before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

(7) An instrument appointing a proxy may be in the following form, or another form the board approves:

_____ (name of co-operative)

I/We _____ (name) of _____ (address)

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

_____ (address)

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

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

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

Signed this _____ day of _____ 20 ____

*Strike out if not applicable.

#To be inserted if desired.

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

42 Postal ballots (other than special postal ballots) (CNL ss247 & 250)

Note 1. The rules may require some decisions to be made by postal ballot.

Note 2. Section 250 of the Law provides that members may require a matter to be decided by a postal ballot. The following rule will facilitate a postal ballot in these situations.

(1) A postal ballot must be held in respect of a special resolution where members who together are able to cast at least 20% (*or a lesser percentage which may be substituted here*) of the total number of votes able to be cast at a meeting of the co-operative may requisition the board to conduct the special resolution by postal ballot.

- i) **Note.** Requisitioning members may be liable for the cost of a postal ballot if the special resolution is not passed. See section 250 of the Law.

- (2) If a postal ballot is requisitioned by members under sub rule (1), the requisition should specify whether the postal ballot is to be a secret ballot.
- (3) A postal ballot requisitioned under sub rule (1) is to be conducted in accordance with the National Regulations and in the form and manner determined by the board.
- (4) The board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- (5) If the board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.
- (6) The board is to appoint a returning officer to conduct the postal ballot. In default of such an appointment, the secretary is the returning officer.
- (7) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members giving:
 - a) particulars of the business in relation to which the postal ballot is being conducted; and
 - b) an explanation of how to lodge a valid vote and the majority required to pass the vote; and
 - c) notice of the closing date and closing time of the postal ballot;
 - d) and must be sent to members so that they arrive (assuming standard postal times) at least 21 days before the closing date of the postal ballot.
 - e) This rule does not apply in relation to special postal ballots.

43 Special postal ballots (CNL ss248 & 249)

Note. A special postal ballot is required by the Law for certain specified decisions. The majority required to pass a special postal ballot is 75%. A special postal ballot is governed by the provisions of the Law and the National Regulations as well as these rules.

- 3) This rule applies where a special postal ballot is required.
- 4) Ballot papers (in such form and with such content as the board may approve) must be sent to all voting members so that they arrive (assuming standard postal times) at least 28 days before the closing date of the special postal ballot.
- 5) The board may determine in a particular case whether the special resolution by postal ballot should be a secret ballot and whether votes may be returnable by fax or other electronic means or both.
- 6) If the board decides to conduct a secret postal ballot, it must ensure that the method used to conduct the ballot will ensure that votes can be counted without identifying the way each member has voted.

44 Special resolutions (CNL ss238–241)

- 1) A special resolution is a resolution that is passed:
 - a) by a two-thirds majority at a general meeting; or
 - b) by a two-thirds majority in a postal ballot (other than a special postal ballot) of members; or
 - c) by a three-quarters majority in a special postal ballot of members.
- 2) A notice of special resolution is required to be given to members at least 21 days before the vote or ballot time (or 28 days notice in the case of a special postal ballot).
- 3) The notice of special resolution must state
 - a) the intention to propose the special resolution; and
 - b) the reasons for proposing the special resolution; and
 - c) the effect of the special resolution being passed.

Note. Voting majorities for ordinary and special resolutions and special postal ballots are defined in the Law along with how a majority is counted and the requirements for registration of special resolutions.

Part 4 Board of directors

45 Board (CNL s172)

- 1) The business of the co-operative are to be managed by or under the direction of the board of directors, and for that purpose the board has and may exercise all the powers of the co-operative that are not required to be exercised by the co-operative in general meeting.
- 2) There shall be a board of six (6) directors
- 3) A director must be
 - a) a natural person
 - b) not less than 18 years of age

46 Qualifications of directors (CNL s174)

- 1) A person is not qualified to be a director of the co-operative unless he or she is –
 - a) A member of the co-operative or a representative of a body corporate which is a member of the co-operative (“member director”; or
 - b) An employee of the co-operative.
- 2) A person may only be elected or appointed as an independent director if there are at least 3 member directors appointed for each independent director.
- 3) A person must not act as a director if the person is disqualified under section 174 of the Law.

47 First directors and election of directors (CNL ss173 & 179)

- 1) The first directors are elected by poll at the formation meeting of the co-operative (except as provided by section 173(2)(b) of the Law).
- 2) The term of office of the first directors is to be not more than 3 years ending on the day of the third annual general meeting after the formation meeting.

Note. The rules may require that directors' terms are of different length to enable rotational retirement.

- 3) The term of office of directors elected thereafter, is to commence from the annual general meeting at which they are elected and ends on the day of the third annual general meeting thereafter.
- 4) The members of the board are to be elected in the manner specified in this rule.
- 5) At the annual general meeting of the co-operative each year two (2) of the directors must retire. A retiring director retains office until the close of the meeting at which his or her successor is elected.
- 6) The directors to retire in any one year are, subject to the provisions as to the filling of casual vacancies, those that have been longest in office since their last election and if there are 2 more directors who became directors on the same day, those who retire must be determined by lot unless they otherwise agree among themselves.
- 7) A retiring director is eligible for re-election.
- 8) At an annual general meeting at which a director retires, the vacated office may be filled in the following manner:
 - 1) At least 6 weeks before an annual general meeting, the board must:
 - (i) notify all members of the number of directors retiring at the annual general meeting; and
 - (ii) advise the members of:
 - (i) their eligibility to nominate as a director; and
 - (ii) the duties and responsibilities of a director; and
 - (iii) the anticipated remuneration (if any); and
 - (iv) the nomination and election procedures.
 - 2) A notice must also be displayed at the place of business of the co-operative inviting nominations of nominees to serve as directors.
 - 3) A nomination must:
 - (i) be signed by 2 or more members; and

- (ii) provide details of the qualifications and experience and age of the person nominated; and
 - (iii) be accompanied by a notice in writing signed by the nominee consenting to their nomination.
 - (iv) And length of any previous service as a director of the co-operative or with any other co-operative.
- 9) The nomination and the notice of consent must be lodged with the secretary of the co-operative at least 30 days before the annual general meeting.
- The secretary, or an officer nominated by the board, must give details of each person who has been nominated to members with the notice of the annual general meeting. Details to be provided to members must include:
- (i) the nominee's name; and
 - (ii) the nominee's qualifications and experience; and
 - (iii) the nominee's length of any previous service as a director of the co-operative or with any other co-operative.
- 10) If the number of nominees equals the number of vacancies, the nominees must be declared elected at the annual general meeting.
- 11) If there are insufficient nominees to fill all vacancies, the nominees to be declared elected at the annual general meeting and nominations for people to fill the remaining vacancies are to be called from the floor and a ballot held if required.
- 12) If the number of nominees exceeds the number of vacancies, the election of directors must be conducted at the meeting by ballot as follows:
- d) a returning officer is elected at the meeting.
 - e) the directors, the secretary and anyone who has an interest in the election are not eligible to be the returning officer.
 - f) all nominees are to be listed on the ballot form in alphabetical order.
 - g) The returning officer is responsible for determining the validity of and counting of the votes.
 - h) If there is an equality of votes, the outcome must be determined by lot.
 - i) The returning officer is to declare the election results.
- 13) If any vacancies remain at the end of the meeting, the vacancies are to be casual vacancies and must be filled in accordance with rule 50.

Note. A co-operative may specify other procedures in the rules to suit the particular circumstances of the co-operative.

48 Removal from office of director (CNL s180)

The co-operative may by resolution under section 180 of the Law, with special notice as required by that section, remove a director before the end of the director's period of office, and may by a simple majority appoint another person in place of the removed director. The person appointed must retire when the removed director would otherwise have retired.

49 Vacation of office of director (CNL s179)

In addition to the circumstances set out in the Law, a director vacates office if the director dies.

Note. If a co-operative wishes to specify circumstances other than those set out in section 179 of the Law or in this rule, those circumstances should be specified as additions to this rule.

50 Casual vacancies and alternate directors (CNL ss173 & 177)

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

51 Remuneration of directors (CNL s203)

Directors' remuneration must comply with the provisions of the Law. A director of the co-operative must not be paid any remuneration for services as a director other than fees, concessions and other benefits that are approved at a general meeting of the co-operative.

52 Proceedings of the board (CNL ss175 & 176)

- 1) Meetings of the board (including meetings conducted outside board meetings pursuant to section 176 of the Law) are to be held as often as may be necessary for properly conducting the business of the co-operative and must be held at least every 3 months.
- 2) A meeting may be held with one or more of the directors participating by using a form of communication that allows reasonably contemporaneous and continuous communication between the directors taking part in the meeting.
- 3) Questions arising at a meeting must be decided by a majority of votes.
- 4) If votes are equal, the chairperson, if a member director, has a second or casting vote.
- 5) A director may call a meeting of the board of directors by giving notice individually to every other director.
- 6) Other than in special circumstances decided by the chairperson, at least 48 hours notice must be given to the directors of all meetings of the board, without which the meeting cannot be held.

53 Quorum for board meetings (CNL s175)

- 1) The quorum for a meeting of the board is 3

54 Chairperson of board

- (1) The chairperson of the board is to be elected by the board.
- (2) If no chairperson is elected or the chairperson is not present within 15 minutes after the time fixed for holding the meeting or is unwilling to act as chairperson of the meeting, the directors present may choose one of their number to be chairperson of the meeting until the chairperson attends and is willing to act as chairperson.
- (3) The person selected under sub rule (2) presides at the board meeting until the time that the chairperson attends and is willing to act.
- (4) The chairperson may be removed, and a new chairperson elected, by:
 - i. ordinary resolution of the board, unless paragraph (b) applies; or
 - ii. ordinary resolution at a general meeting, if these rules provide that the chairperson is elected at a general meeting of the co-operative.
- (5) A chairperson shall be elected in the last month of each financial year.

55 Minutes

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

Note. Section 209 of the Law also requires any declarations of interest by directors to be recorded in the minutes.

- 2) Minutes must be entered in the appropriate records within 28 days of the meeting to which they relate was held.
- 3) The minutes are to be signed within a reasonable time after the meeting to which they relate by either the chairperson of that meeting or the chairperson of the next meeting.

Part 5 Rules

56 Amendments and copies of rules (CNL ss57 & 60–63)

- (1) Any amendment of the rules must be approved by special resolution. However, if model rules are adopted in the manner specified under section 65(a) of the Law, any amendments to the model rules as notified by the Registrar are included in the co-operative's rules without the need for a special resolution.
 - i) **Note.** Section 60 of the Law permits the Registrar to specify classes of rules that must not be changed without first obtaining the approval of the Registrar. A co-operative should check whether any prior approval is required before the change is put to a special resolution vote.
- (2) A proposal to amend the rules of the co-operative must be made in a form approved by the board which clearly shows the existing rule or rules concerned and any proposed amendment to the rules.
- (3) A member is entitled to make a copy of entries in a register specified in the Law
 - a) If the copy is a photocopy or electronic copy, on payment of a fee of \$1 per page to a maximum of \$20; and
 - b) In any other case, free of charge.

Part 6 Administrative matters

57 Seal (CNL ss49 & 223)

- (1) The co-operative's name and registration number must appear on its common seal and any official seal.
- (2) The common seal must be kept at the registered office in the custody that the board directs.
- (3) The co-operative may have one or more official seals for use outside the State or Territory in place of its common seal. Each of the additional seals must be a facsimile of the common seal with the addition on its face of the name of the place where it is to be used.
- (4) The seal of the co-operative must not be affixed to an instrument other than under a resolution of the board.
- (5) Two directors, or one director and the secretary, must be present and must sign all instruments sealed while they are present.
- (6) The persons affixing the official seal must certify in writing on the instrument to which it is affixed, the date and place at which it is affixed.

58 Inspection of records and registers (CNL ss214 & 215)

- (1) Members of the co-operative have free access to the records and registers referred to in section 214 (1) of the Law and they may make a copy of any entry in the register. If the copy is a photocopy or electronic copy, on payment of a fee of \$1.00 per page to a maximum of \$20.00 and any other case, free of charge.

59 Safe keeping of securities

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

60 Notices to members (CNL s611)

- (1) This rule applies in addition to section 611 of the Law regarding how a notice or other document may be given to a member of the co-operative.
- (2) A notice or other document required to be given to a member of the co-operative may be given by the co-operative to any member by any form of technology (for example, by fax or email), where the member has given consent and notified the co-operative of the relevant contact details.
- (3) If a notice is sent by post, service is taken to be effected at the time at which the properly addressed and prepaid letter would be delivered in the ordinary course of post. In proving service by post, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (4) A notice forwarded by some other form of technology is taken to have been served, unless the sender is notified of a malfunction in transmission, on the day of transmission if transmitted during a business day, otherwise on the next following business day.
- (5) A notice may be given by the co-operative to joint members by giving the notice to the joint member named first in the register of members.
- (6) 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.
- (7) 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, and:
 - a. the address should be that supplied for the purpose by the person claiming to be entitled; or

- b. 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.

Part 7 Accounting and financial matters

61 Financial year

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

62 Accounts

- (1) The board must have at least one financial institution account, electronic or otherwise, in the name of the co-operative, into which all amounts received by the co-operative must be paid as soon as possible after receipt.
- (2) All cheques drawn on the accounts, and all drafts, bills of exchange, promissory notes and other negotiable instruments, of the co-operative must be signed by 2 authorised persons.
- (3) The operation of any electronic accounts must be restricted so that there is a requirement for authorisation by 2 authorised persons.
- (4) For the purposes of this rule, an **authorised person** is:
 - a) a director; or
 - b) a person approved by the board.

63 Appointing an auditor or reviewer for small co-operative (optional rule) (CNL s298)

Note 1. If a co-operative is a small co-operative in a particular financial year, there is no requirement to appoint an auditor, unless the co-operative is directed to prepare audited or reviewed financial statements by its members or by the Registrar. A small co-operative may choose to appoint an auditor or a reviewer to have its financial statements to members either audited or reviewed each financial year where there is no direction from members or the Registrar.

Note 2. A review may be carried out by a person who:

- is a member of the Institute of Chartered Accountants in Australia and holds a Certificate of Public Practice issued by that body
- is a member of CPA Australia Ltd and holds a Public Practice Certificate issued by that body
- is a member of the Institute of Public Accountants and holds a Professional Practice Certificate The co-operative must appoint an auditor / a reviewer (*strike out whichever is not applicable*) in respect of its financial statements.

- (1) An auditor appointed under this rule is to conduct an audit of the co-operative's financial statements as presented to members.
- (2) The appointment of an auditor under this rule is to be made at an annual general meeting.
- (3) Audits must be carried out annually
- (4) The co-operative may appoint another auditor at a subsequent annual general meeting if there is a vacancy in the office of the auditor.
- (5) The provisions of section 300(2) of the Law apply to an auditor appointed under this rule in the same way (but with any necessary adaptations) as they apply to an auditor appointed for a large co-operative.

Note. See section 310 of the Law regarding the removal and resignation of auditors.

64 Co-operative Funds and disposal of surplus funds during a financial year (CNL ss355–358)

- (1) The funds and property of the co-operative shall be applied solely towards the carrying out and promotion of its objects and no part shall be paid or transferred directly or indirectly by way of discount, rebate or otherwise by way of profit to members of the co-operative.
- (2) The board may retain all or part of the surplus arising in any year from the business of the co-operative, to be applied for the benefit of the co-operative.
- (3) There must be no return on surplus or share capital to members other than any entitlement they have to the nominal value of shares at winding up.

65 Provision for loss

The board may resolve to retain part of the surplus arising from business of the co-operative in any year to be applied to meet any loss on the transactions of the co-operative.

66 Financial reports to members (CNL Part 3.3)

The co-operative must prepare financial reports and statements in accordance with the Law, the National Regulations and these rules.

Note. The financial reports or statements required by the Law to be given to members vary according to the size of a co-operative in a given year. Large co-operatives are required to prepare and lodge with the Registrar full audited financial reports as set out in Part 3.3 of the Law. Small co-operatives are not required to lodge financial reports with the Registrar but are required to lodge an annual return under section 293 of the Law and provide members with basic minimum financial statements set out in the National Regulations. If the basic minimum reports prescribed in the National

Regulations are not considered sufficient for a particular co-operative, the rules may include additional financial statements or information.

Part 8 Winding up

67 Winding up (CNL Part 4.5)

Note. A non-distributing co-operative is prohibited from distributing any surplus to members either during its operations or when it is wound up. If there are surplus funds after winding up, those funds must be given to another entity that also prevents distribution to its members. The co-operative may specify this entity in its rules and if the entity, for some reason, no longer exists when the co-operative is wound up, then the rule can provide a process for determining an alternative recipient of the funds.

- (1) The winding up of the co-operative must be in accordance with Part 4.5 of the Law.
- (2) If, on the winding up or dissolution, there remains any property after the satisfaction of all its debts and liabilities, this must not be paid to or distributed among the members of the co-operative but must be given or transferred to an institution or institutions:
 - a. with objects similar to those of the co-operative; and
 - b. whose constitution prohibits the distribution of its property among its members;
and
 - c. chosen by the members of the co-operative at or before the dissolution or, in default, by a judge of the court with jurisdiction in the matter.