

# Appendix 5 — Restructures

## A5- 1 Definitions

In this Appendix 5:

- (1) “**associate**” means in relation to a primary person:
  - (a) a spouse or defacto spouse of the primary person;
  - (b) a parent, son or daughter of the primary person, spouse or defacto spouse;
  - (c) a person who is a partner of the primary person;
  - (d) a person who is a director of a body (other than the **company** or a related body corporate of the **company**) of which the primary person is a director;
  - (e) a person who is a trustee of a trust in relation to which a person or **entity** of a kind referred to in paragraphs (a), (b), (c), (d), (f) or (g) benefits or is capable of benefiting;
  - (f) an **entity** over which:
    - (i) the primary person or an **associate** of the primary person has **control**;
    - (ii) two or more persons who are each the primary person or an **associate** of the primary person together have **control**;
  - (g) any **entity** in which:
    - (i) the primary person or an **associate** of the primary person is beneficially entitled to more than twenty per cent of any class of **securities**;
    - (ii) two or more persons who are each the primary person or an **associate** of the primary person together are beneficially entitled to more than twenty per cent of any class of **securities**.
- (2) “**control**” means the ability or power of an entity:
  - (a) whether direct or indirect;
  - (b) whether or not enforceable; and
  - (c) whether presently exercisable by means of, in breach of or by revocation of any combination of the following:
    - (i) trusts;
    - (ii) relevant agreement; and
    - (iii) practices,

to dominate decision making, directly or indirectly, in relation to the financial and operating policies of any other **entity** so as to enable that other **entity** to operate with it in pursuing those objectives of the controlling **entity**.

- (3) “**entity**” means any:
  - (a) incorporated or unincorporated body;
  - (b) trust or partnership; or
  - (c) any legal, administrative or fiduciary arrangement, organisational structure or other party (including a person) having the capacity to deploy scarce resources in order to achieve objectives.
- (4) “**mutual**” means a “mutual entity” as defined in the **Corporations Act**.
- (5) “**qualifying member**” means a **member**:
  - (a) who has been a **member** continuously since 28 November 2012; or
  - (b) who became a **member** after 28 November 2012 and has been a **member** continuously for at least two years.
- (6) “**restructure**” means, subject to clause A5-6, when the **company** (whether acting through its **board**, its **members** or otherwise) conducts or proposes to conduct a reduction of capital, scheme of arrangement, deed of arrangement, transfer of business or any other form of corporate restructure where after completion of the restructure:
  - (a) the **company** ceases to be a **mutual**;
  - (b) a person other than a **mutual** holds more than 90% of the shares in the **company**;
  - (c) a group of **associates**, or a group of related bodies corporate, other than a group whose members are all **mutuals** between them hold more than 90% of the shares in the **company**;
  - (d) a person that is not a **mutual** has a legal or equitable interest in more than 20% of the gross assets of the **company** based on the latest report that the **company** has given **APRA** as at the time of the restructure;
  - (e) a group of **associates**, or a group of related bodies corporate, other than a group whose members are all **mutuals** between them have a legal or equitable interest in more than 20% of the gross assets of the **company** based on the latest report that the **company** has given **APRA** as at the time of the restructure; or
  - (f) the successor to the **company’s** business is not a **mutual**.
- (7) “**securities**” has the same meaning as in the **Corporations Act** from time to time, but also includes exchange traded options.
- (8) Terms that are not expressed in this **Constitution** or this Appendix 5 but that are defined in the **Corporations Act** from time to time, have the same meaning as in the **Corporations Act**.

## A5-2 Entitlement to Reserves

Subject to Rule A1-12(2), only a **qualifying member** is entitled to participate in the surplus and profits of the **company** if the **members** approve a **restructure** under clause A5-3.

## A5-3 Approval of Restructure

- (1) If this Appendix applies, the **company** may only act upon the **restructure** if:
  - (a) the **company** has only one class of **members**:
    - (i) not less than 25% of the **members** have voted in writing in a ballot to be conducted in a manner determined by the **board**; and
    - (ii) not less than 75% of the **members** who have voted approve the **restructure**;
  - (b) the **company** has more than one class of **members**:
    - (i) not less than 25% of the **members** in each class have voted in writing in a ballot to be conducted in a manner determined by the **board**; and
    - (ii) not less than 75% of the **members** who have voted in each class approve the **restructure**.
- (2) For the purposes of this clause **qualifying members** are to be treated as a different class from non-qualifying **members**.
- (3) For the purposes of this clause the number of **members** whose approval in writing is to be determined at midnight of the later of:
  - (a) the immediately preceding 30 June before the ballot; or
  - (b) the day before the **general meeting** (if any) held to consider the restructure.
- (4) Subject to the requirements for **MCI**s in the **Corporations Act** and under any applicable **prudential standards**, the **board** may determine in the terms of issue of any **MCI**s that this clause A5-3 applies to the relevant **MCI holders** as though they were **members** for the purposes of this Rule, provided that:
  - (a) all **MCI holders** entitled to vote under this clause A5-3 as though they were **members** will form a separate class of **members** for the purposes of clause A5-3(1)(b); and
  - (b) except as provided in Rule 9.4(2) (Body Corporate Representatives) and Rule 9.5 (Proxies), if a holder of a **member share** is also a **voting MCI holder** under this Clause A5-3, that **voting MCI holder** will have no more than one vote under this Rule, irrespective of the number of **MCI**s they hold, but may choose whether to vote in the relevant class of **members** or in the class of **MCI holders** by giving notice to **the company** in the manner and form prescribed in the notice of meeting for the **general meeting** considering the restructure. If no such notice is duly received by the **company**, the **voting MCI holder's** vote will be counted towards the relevant **members** class.

## A5-4 Special Consent Required for Modification or Repeal of Appendix 5

- (1) A special resolution does not have any effect in relation to:

- (a) a modification or repeal of any clause in this Appendix 5; or
- (b) a modification or repeal of the **Constitution** where the effect of the modification or repeal is to modify, exclude or restrict the operation of the clauses in this Appendix 5,

Unless:

- (c) not less than 25% of the **members** and any **voting MCI holders** have voted in writing in a ballot to be conducted in a manner determined by the **board**; and
  - (d) not less than 75% of the **members** and any **voting MCI holders** who have voted approve the modification or repeal either before or within 3 months after the special resolution is passed.
- (2) The number of **members** and any **voting MCI holders** whose approval in writing is required is to be determined as at midnight before the special resolution.

#### **A5 -5 Cessation**

- (1) This Appendix ceases to have effect at the end of the 2024<sup>41</sup> **Annual General Meeting**. This Appendix does not apply to any proposed repeal of this sub-clause, nor to any proposed modification of this sub-clause to the extent that the modification is to set a later date for when this Appendix ceases to have effect.
- (2) This Appendix other than clause A5-5(3) ceases to have effect immediately upon the following conditions being met:
- (a) the Australian Securities and Investments Commission publishes a written notice that this Appendix ceases to have effect in relation to the **company**; and
  - (b) the Australian Securities and Investments Commission delivers a copy of the written notice to the **company**.

This sub-clause is subject to any terms and conditions in the written notice.

- (3) If this Appendix ceases to have effect by reason of clause A5-5(2) it will again come into effect by **board** resolution upon the Australian Securities and Investments Commission doing any of the following:
- (a) withdrawing the written notice referred to in clause A5-5(2);
  - (b) making an order or exemption that permits the **company** to adopt or recommence the operation of this Appendix or provisions to the effect of this Appendix; or
  - (c) otherwise permitting the **company** to recommence the operation of this Appendix.

**A5 -6 MCIs**

- (1) The provisions of this Appendix will not apply in relation to:
  - (a) the creation or issuance of, or the agreement to create or issue; nor
  - (b) the cancellation or variation of any rights attached to or reduction in capital in relation to, any **MCIs** or capital instruments convertible to **MCIs** (including, in each case, **MCIs** of different classes and with different rights), or class of them.
- (2) The provisions of this Appendix will not apply to the extent any amendment to this Constitution relates to or facilitates anything referred to in Subclause A5-6(1).
- (3) For the avoidance of doubt, a reference to “shares” or “**securities**” in this Appendix does not include a reference to **MCIs**.
- (4) Any proposed resolution(s) to approve a **restructure** passed at a **general meeting** and approved in accordance with the terms of this Appendix 5, that would result in the **company** ceasing to be an “MCI mutual entity” (as defined in the **Corporations Act**) can only take effect if:
  - (a) there are no **MCIs** in the **company**; or
  - (b) subject to Rule A1-12(4), the resolution(s) to approve the **restructure** provides for each **MCI** to be cancelled at or before the time the **company** ceases to be an “MCI mutual entity” (as defined in the **Corporations Act**) (whether or not the holders of the **MCIs** to be cancelled are to receive other securities in respect of those **MCIs**).