

Credit  
Ombudsman  
Service

COSL  
Constitution

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Edition



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PO Box A252 Sydney South NSW 1235

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## 1 Company Name and Status

### Company Name

- 1.1 The name of the Company is Credit Ombudsman Service Limited.

### Company Status

- 1.2 The Company is limited by guarantee and does not have a share capital.

## 2 Definitions and Interpretation

- 2.1 Many words and phrases have particular meanings in this Constitution and are governed by certain rules of interpretation. These are set out in the "Dictionary" appearing at the end of this Constitution.

## 3 Objects

- 3.1 The objects of the Company are:
- (a) to act as a complaints resolution body approved by ASIC;
  - (b) to actively promote the role of the Company as an external dispute resolution body for the Financial Services Industry;
  - (c) to actively facilitate the resolution of complaints concerning all aspects of the provision of Financial Services;
  - (d) to provide timely, efficient and effective resolution of complaints against Members having regard to the criteria of relevant legal requirements (including rights provided by law to consumers), applicable codes of practice, good practice in the Financial Services Industry, and fairness in all the circumstances;
  - (e) to establish and as appropriate modify procedures for resolving complaints against Members;
  - (f) to support and promote the development of the Financial Services Industry by providing resources and procedures for the timely, efficient and effective resolution of complaints against Members;
  - (g) to foster and promote sound and ethical business practices in the Financial Services Industry;
  - (h) to ensure that members of the public in their dealings with Members have available to them the highest standards of complaint resolution procedures that are relevant and continue to be relevant having regard to changes in the Financial Services Industry;
  - (i) to ensure that at all times the Company has the financial resources, staff, technology, research facilities and other resources to ensure



the timely, efficient and effective resolution of complaints in the Financial Services Industry;

- (j) to cooperate and assist Governments, Government instrumentalities and other bodies in relation to the regulation and efficient and effective operation of, and the promotion of complaint resolution procedures within, the Financial Services Industry; and
- (k) to do anything permitted by law in furtherance of the objects of the Company or otherwise.

3.2 The Company's objects are not to be taken as in any way restricting the legal powers or capacities of the Company.

## 4 Limited Liability

- 4.1 The liability of the Members is limited.
- 4.2 Every Member of the Company undertakes to contribute to its assets, if it is wound up whilst that Member is a Member of the Company or within one year after the Member ceased to be such a Member, for the payments of debts and liabilities of the Company contracted before the Member ceased to be a Member and the expenses of winding up the Company and any adjustment of rights of the contributories among themselves, and in any event such amount as may be required must not exceed \$20.00 per Member.

## 5 Use of the Company's Property

- 5.1 The Company's income and property must be applied solely towards promotion of its objects. No portion of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to any Member.
- 5.2 However, nothing in this Constitution prevents the payment in good faith of reasonable and proper:
  - (a) remuneration to any director, officer or employee of the Company or to any Member in return for services actually rendered to the Company;
  - (b) interest on money borrowed from any Member for the purposes of the Company provided that the interest rate is equal to or less than the interest charged by the Company's own bank on similar borrowings;
  - (c) rent for premises leased from any Member; or
  - (d) payment for any goods supplied or services rendered by a Member to the Company.



## **6 Distribution of Company's Property on Winding Up**

- 6.1 Any property remaining after the winding up or dissolution of the Company, after satisfaction of all its debts and liabilities, must not be paid or distributed amongst the Members of the Company but must be given or transferred to such entity or organisation whose Constitution has similar objects to those of the Company and whose Constitution prohibits the distribution of its income and property at least to the same extent to which the Company's own Members are restricted.

## **7 Membership**

### **Number of Members**

- 7.1 The number of Members with which the Company may be registered from time to time is unlimited.

### **Categories of membership**

- 7.2 The Board may at any time and from time to time establish categories of membership with such rights, privileges and obligations as the Board may determine.
- 7.3 The Board may in its absolute discretion transfer a Member or group of Members from one category of membership to another on such terms and conditions the Board sees fit to determine.

### **Eligibility for membership**

- 7.4 A person is eligible to be a Member if it is a Financial Services Provider.
- 7.5 Notwithstanding Article 7.4, the Board may in its absolute discretion:
- (a) require all applicants or an individual applicant or an applicant for a particular class of membership to satisfy other membership eligibility requirements; or
  - (b) approve a person as a Member of the Company even though that person does not otherwise satisfy the requirements for membership.
- 7.6 Notwithstanding Article 7.4, the Board may in its absolute discretion refuse to approve a person as a Member.
- 7.7 An application for membership must not be refused unless the Applicant has been given at least 21 days' notice in writing of the reasons why the Board proposes to refuse the application for membership and the Applicant has otherwise been afforded procedural fairness.

- 7.8 An applicant whose membership application has been refused by the Board may not appeal to the Company in general meeting.
- 7.9 An applicant for membership must complete and sign an application for membership in such form and giving such particulars and providing such documents as the Board may in its absolute discretion specify.

#### **Form of application**

- 7.10 An application for membership must be in writing and in such form and accompanied by such documents as the Board at any time and from time to time determines.
- 7.11 An application for membership must specify the category of membership for which application is made.
- 7.12 In considering any application for membership the Board may employ such procedures, and require such information, and inform itself as to such matters concerning the application, as it sees fit.

#### **When a person becomes a Member**

- 7.13 An applicant becomes a Member of the Company when the applicant's name is entered in the Register of Members.

#### **Member bound**

- 7.14 Every Member of the Company is bound by and must comply with this Constitution in its own right, and as between itself and other Members, and as between itself and the Company.
- 7.15 Unless the conditions of membership otherwise allow, every Member is bound by and must comply with:
- (a) the Credit Ombudsman Service Rules, the Guidelines to the Credit Ombudsman Service Rules and every By-law made or Practice Note issued by the Board; and
  - (b) every Order, Award or Direction to Comply pursuant to the Credit Ombudsman Service Rules.

#### **Membership not transferable**

- 7.16 Subject to Article 7.3, no right, privilege or obligation of a Member under this Constitution may be or is capable of being transferred, transmitted or assigned to any other person.

#### **No joint membership**

- 7.17 Joint Membership of the Company is not permitted.



## 8 Fees

### Application Fee

- 8.1 Every applicant for membership must pay an application fee ("Application Fee") at the time of making the application.
- 8.2 The Application Fee payable by an applicant for membership is that amount that is, or is calculated in the manner, determined by the Board from time to time.

### Annual Fee

- 8.3 A Member must pay an annual membership fee ("Annual Fee").
- 8.4 The Annual Fee payable by a Member is that amount that is, or is calculated in the manner, determined by the Board from time to time and the form of Membership Renewal Notice is that form determined by the Board from time to time.
- 8.5 The Annual Fee must be paid within the time and for a period specified in the Membership Renewal Notice.

### Service Fees

- 8.6 The Board may at any time and from time to time prescribe, or prescribe a manner for calculating, fees and charges payable by a person in connection with the complaint resolution operations of the Company ("Service Fees").
- 8.7 Service Fees must be paid within the period for payment stipulated by the Board from time to time.

### Prescribed Fees

- 8.8 The Board may at any time and from time to time prescribe, or prescribe a manner for calculating, fees other than Application Fees, Annual Fees and Service Fees payable by Members in connection with operations of the Company ("Prescribed Fees").

### Fees Waiver, etc

- 8.9 The Board may at any time and from time to time determine different (whether higher or otherwise) Application Fees, Annual Fees, Service Fees, or Prescribed Fees, or suspend or waive payment of such fees, in respect of all Members or a particular Member or Members or a particular category of membership, either generally or in respect of a particular circumstance or particular circumstances.



## 9 Resignation and Cessation of Membership

### How a Member resigns from membership

- 9.1 Any Member may resign as a Member of the Company at any time by giving to the Secretary at least two months notice in writing to that effect and upon paying all Fees due to the Company by that Member.

### When resignation takes effect

- 9.2 Unless the Board in its absolute discretion in a particular case otherwise allows in writing, a Member's resignation does not take effect and the Member does not cease to be a Member until:
- (a) the expiration of the two months notice period; and
  - (b) the payment of all Fees due to the Company by that Member.

### Other cases when membership ceases

- 9.3 The Board may in its absolute discretion cancel a Member's membership of the Company in any of the following cases:
- (a) being a corporation, is or becomes an externally-administered body corporate as defined in the Act; or
  - (b) being an individual, is or becomes an insolvent under administration as defined in the Act; or
  - (c) fails to pay any Fee within the time stipulated by the Board for payment and the Board resolves that the Member shall cease to be a Member; or
  - (d) ceases to carry on business or disposes of its business; or
  - (e) ceases to hold a relevant licence.
- 9.4 In relation to any complaint made against a Member that is received by the Credit Ombudsman Service, the Board may in its absolute discretion and despite the occurrence of any of the events described in Article 9.3, bypass the Member's internal dispute resolution process, if any, whether or not the Member has commenced considering the complaint within that process.
- 9.5 The cessation of a Member's membership pursuant to this Article 9 does not:
- (a) entitle the Member to any refund of any Fee paid or any compensation; or
  - (b) prejudice or restrict in any manner whatsoever the Member's liability to pay any Fee which has become due and payable before cessation of membership; or

- (c) preclude or restrict in any manner whatsoever Credit Ombudsman Service exercising its powers under the Credit Ombudsman Service Rules to deal with a complaint received by it before the date on which the Member's cessation of membership took effect and to require the Member to comply fully with the Member's obligations under the Credit Ombudsman Service Rules and Guidelines to the Credit Ombudsman's Rules in respect of that complaint; or
- (d) prejudice or diminish in any manner whatsoever the Member's obligations under the Credit Ombudsman Service Rules and Guidelines to the Credit Ombudsman's Rules in respect of a complaint received by Credit Ombudsman Service before the date on which the Member's cessation of membership took effect; or
- (e) preclude or restrict in any manner whatsoever the making of an Award or Order by the Credit Ombudsman or the due enforcement by the Company of any Award or Order made by the Credit Ombudsman as regards that Member pursuant to the Credit Ombudsman Service Rules in respect of a complaint received by Credit Ombudsman Service before the date on which the Member's cessation of membership took effect.

## 10 Expulsion, Suspension and Reinstatement of a Member

### Expulsion and suspension

#### 10.1 If a Member:

- (a) has refused or failed to comply with a Direction to Comply issued pursuant to Article 38 within the time specified therein for compliance; or
- (b) has refused or failed to comply with any provision of this Constitution, the Credit Ombudsman Service Rules or any By-law made by the Board; or
- (c) has refused or failed to comply with an obligation imposed on the Member pursuant to the Credit Ombudsman Service Rules or Guidelines to the Credit Ombudsman Service Rules; or
- (d) is expelled or precluded from membership of any other ASIC-approved complaints handling or disputes resolution scheme; or
- (e) has, in the reasonable opinion of the Board acted in a manner prejudicial to the reputation or interests of the Company,  
the Board may by resolution;
  - (i) reprimand the Member in such manner and subject to such conditions as the Board thinks fit; or
  - (ii) suspend the Member from membership of the Company for such specified period as the Board thinks fit; or



- (iii) expel the Member from membership of the Company.
- 10.2 Except where Article 38 applies, a Member shall not be dealt with in any way under Article 10.1 unless the Member concerned has been given at least seven days notice in writing of the matters alleged against that Member and has otherwise been afforded procedural fairness.
- 10.3 A Member who has been reprimanded, suspended or expelled by Board resolution may not appeal to the Company in general meeting.
- 10.4 A Member who has been expelled by Board resolution, ceases to be a Member of the Company immediately upon the passing of that resolution, or at such later time as the Board's resolution specifies.
- 10.5 A Member whose membership has been suspended by Board resolution, is suspended from membership immediately upon the passing of that resolution, or at such later time as the Board's resolution specifies.
- 10.6 The cessation or suspension of a Member's membership pursuant to this Article 10 does not:
- (a) entitle the Member to any refund of any Fee paid or any compensation; or
  - (b) prejudice or restrict in any manner whatsoever the Member's liability to pay any Fee that has become due and payable before cessation or suspension of membership; or
  - (c) preclude or restrict in any manner whatsoever Credit Ombudsman Service exercising its powers under the Credit Ombudsman Service Rules to deal with a complaint received by it before the date on which the cessation or suspension of the Member's membership took effect and to require the Member to comply fully with the Member's obligations under the Credit Ombudsman Service Rules in respect of that complaint; or
  - (d) prejudice or diminish in any manner whatsoever the Member's obligations under the Credit Ombudsman Service Rules in respect of a complaint received by Credit Ombudsman Service before the date on which the cessation or suspension of the Member's membership took effect; or
  - (e) preclude or restrict in any manner whatsoever the making of an Award or Order by the Credit Ombudsman or the due enforcement by the Company of any Award or Order made by the Credit Ombudsman as regards that Member pursuant to the Credit Ombudsman Service Rules in respect of a complaint received by Credit Ombudsman Service before the date on which the Member's resignation took effect.

## Reinstatement

- 10.7 The Board may in its absolute discretion and upon such terms and conditions as it sees fit reinstate a Member to membership of the Company.

## 11 Representation of Member

- 11.1 A Voting Member may be present and vote in person or may be represented at any meeting of the Company by:
- (a) proxy;
  - (b) attorney; or
  - (c) representative appointed under the Act or under Article 11.3 ("Representative").
- 11.2 Unless the contrary intention appears, a reference to a Voting Member in Articles 11 to 20 means a person who is a Voting Member, or is a proxy, attorney or Representative of that Voting Member.
- 11.3 Every Voting Member that is a body corporate must appoint a natural person to act as its representative at meetings of the Company. Every such appointment and any change in such appointment must be in writing, signed by the Member in accordance with its own Constitution and lodged with the Secretary. The name and address of every such Representative must be recorded in a Register kept at the office of the Company.
- 11.4 A Representative may appoint another person in his or her place at any meeting of the Company provided that the Representative has authorised that other person in writing to act as a substitute and has notified the Secretary in writing of such appointment prior to the meeting to be attended by that substitute Representative.

## 12 Meetings of Members

- 12.1 An Annual General Meeting of the Company must be held in accordance with the provisions of the Act. Every other meeting of the Company shall be called an extraordinary meeting.
- 12.2 Every Director shall be entitled to attend all meetings of the Company notwithstanding that that Director is not a duly appointed Representative of a Member.

## 13 Calling of Meetings

- 13.1 The Board may call a general meeting of Members.
- 13.2 Not less than 5% of the total of Voting Members may requisition the holding of a general meeting.



## 14 Notice of Meeting

- 14.1 Every Notice of General Meeting must:
- (a) specify the date, time and place of the meeting; and
  - (b) specify the general nature of any special business to be conducted at the meeting; and
  - (c) if a special resolution is proposed, state the intention to propose the special resolution and specify the resolution proposed.
- 14.2 Subject to the provisions of the Act, every Member and Director and the Auditor must be given at least 21 days' notice of any general meeting and where a special resolution is proposed not less than 28 days' notice of that meeting. In calculating the number of days' notice required, the day on which the notice is given and the day on which the notice is served or deemed to be served are to be disregarded.
- 14.3 A general meeting will be deemed to be duly convened even if it has been convened on shorter notice than required by Article 14.2 if:
- (a) in respect of any Annual General Meeting, all Voting Members agree to shorter notice; or
  - (b) in respect of any other meeting, Voting Members holding at least 95% of the total voting rights of all Voting Members agree to shorter notice.

## 15 Cancellation or Postponement of Meeting

### Cancellation or Postponement

- 15.1 The Board may cancel or postpone the holding of any general meeting. However any general meeting called by a requisition of Voting Members may only be cancelled or postponed with the consent of the majority of the requisitioning Voting Members.

### Notice

- 15.2 The Board must notify the Members of any cancellation or postponement of the general meeting in such manner as it sees fit. If any general meeting is postponed for 28 days or more then not less than five days' notice must be sent to Members of the postponed meeting. However in this case it is not necessary to specify in the notice the nature of the business to be transacted at the postponed meeting.

## 16 Venue

- 16.1 Subject to the Act, the Company may hold a general meeting at two or more venues using such technology as gives the Members as a whole a reasonable opportunity to participate in the meeting.



## 17 Annual General Meeting

- 17.1 The business of an Annual General Meeting of the Company must include the following:
- (a) to receive, consider and note the Company's financial statements and reports as required by the Act to be laid before each Annual General Meeting; and
  - (b) to note appointments of Directors; and
  - (c) to appoint auditors (if necessary); and
  - (d) to transact any other business required by this Constitution or by law to be transacted at an Annual General Meeting.

## 18 Report on the Company's Activities

- 18.1 The Board must at each Annual General Meeting also submit to Members a report on the activities of the Company for the period since the previous Annual General Meeting.

## 19 Proceedings at Meetings of Members

### Quorum

- 19.1 No business may be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business.
- 19.2 A quorum for a general meeting is ten Voting Members or not less than ten percent (10%) of the total of Voting Members (whichever is the lesser), present in person or by proxy or attorney or Representative.

### No quorum

- 19.3 If a quorum is not present within 15 minutes from the time appointed for the meeting:
- (a) if the meeting was convened upon the requisition of Voting Members, the meeting is dissolved; or
  - (b) in any other case, the meeting stands adjourned to such time, day (including the same day) and place as the chairman of the meeting may determine; and
  - (c) at the adjourned meeting those Voting Members present at the appointed time shall form a quorum, subject always to any requirement of the Act.

### Meeting Chairman

19.4 The Chairman, or in the Chairman's absence, a Director nominated by a majority of the Board is entitled to take the chair.

#### Powers and duties of Meeting Chairman

19.5 The Chairman of a general meeting is responsible for the general conduct of that meeting.

19.6 Amongst other things the Chairman may:

- (a) delay the commencement of any meeting; or
- (b) make, vary or rescind rulings or rules of procedure; or
- (c) adjourn the meeting or any item of business of that meeting without the consent of the meeting if the Chairman determines it is appropriate for the orderly conduct of the meeting, or the conduct of a poll; or
- (d) determine conclusively any question concerning admissibility, validity or rejection of a vote.

### Control of meetings

19.7 The Chairman may refuse admission to or cause to be removed from the meeting any person who is not a Member or a duly appointed representative of a Member, or who is in possession of anything considered by the Chairman to be dangerous, offensive or liable to cause disruption, or who behaves or threatens to behave in a dangerous, offensive or disruptive manner.

### Business at an adjourned meeting

19.8 At any adjourned meeting the only business that may be dealt with is business left unfinished at the meeting from which the adjournment took place.

## 20 Voting at General Meetings

### Voting on a resolution

20.1 At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded under Article 20.3. On a show of hands, a declaration by the Chairman is conclusive evidence of the result.

### Entitlement to vote

20.2 Entitlement to vote:



- (a) On a show of hands, each Voting Member present in person and each other person present as a proxy, attorney or Representative has one vote.
- (b) On a poll, each Voting Member present in person has one vote and each person present as proxy or attorney or Representative has one vote for each Voting Member that the person represents.
- (c) If a Voting Member has been appointed to act as a Representative or by proxy or attorney of another Voting Member, that person may vote both as a Voting Member and for that other Voting Member.

### **Demand for a poll**

20.3 A demand for a poll may be made:

- (a) before the vote is taken;
- (b) before the voting results on the show of hands are declared; or
- (c) immediately after the voting results on the show of hands are declared,

by:

- (i) the Chairman;
- (ii) not less than 5 Voting Members present in person or by Representative or by proxy.

### **Declaration of result**

20.4 Every declaration by the Chairman of a general meeting that a resolution has been carried or carried by a particular majority, or lost, or has not been carried by a particular majority, and every entry made in the books containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against such resolution.

### **Conduct of polls**

20.5 Any demand for a poll may be withdrawn. Any poll duly demanded must be taken in such manner and at such time (either immediately or after an interval or otherwise) as the Chairman directs. The result of the poll is the resolution of the meeting at which the poll was demanded.

### **Equality of votes**

20.6 If on a show of hands or on a poll the votes are equal, the resolution will be deemed to have lapsed.

**Objections to validity**

- 20.7 Any objection to the validity of any vote must be raised at the meeting, or adjourned meeting, or poll at which the vote is tendered. In every other case, such an objection is to be disregarded.

**Instruments of proxy**

- 20.8 Every instrument appointing a proxy must be in writing under the hand of the appointor or the appointor's attorney duly authorised in writing, or where the appointor is a corporation, signed in such manner as permitted by that corporation's Constitution. A proxy holder may, but need not, be a Member of the Company. An instrument of proxy is deemed to confer authority to demand or join in the demanding of a poll.
- 20.9 Every instrument of proxy must be in or to the effect of the following form, or in a form as near as possible to the following form:

**CREDIT OMBUDSMAN SERVICE LIMITED**

**PROXY**

I,

being:

- a Voting Member of Credit Ombudsman Service Limited ("the Company"); or
- the duly authorised representative of  (being a Voting Member of the Company)

hereby appoint:

- the Chairman of the meeting; or
- of

as

- my proxy; or
- as proxy of  (name of appointor)

to vote for and on behalf of:

- Me; or
- the appointor

at the general meeting of the Company to be held on...

the  day of  year of

I direct my proxy to vote:

- as my proxy thinks fit; or
- in the following manner:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature

Date



- 20.10 Every instrument appointing a proxy must be delivered to the address nominated in the notice of meeting for the purpose or if no such address has been nominated to the Secretary not less than 24 hours before the time for holding the general meeting or any adjourned general meeting at which the proxy holder proposes to vote and in default, the instrument of proxy shall be disregarded. An instrument appointing a proxy may be hand delivered, delivered by post, facsimile transmission or by other electronic means.
- 20.11 The non-receipt of notice of a general meeting or the cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or the cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## 21 Logo

- 21.1 The Board may in its absolute discretion in writing permit a Member to use the Logo in the course of that Member's business on such terms and conditions as the Board from time to time sees fit. The Board may at any time withdraw the permission or at any time and from time to time vary the terms and conditions of the use of the Logo by written notice to the Member and the Member must forthwith cease to use the Logo or must take such action with respect to the Logo as the Board notifies.

## 22 The Board

### Composition of the Board

- 22.1 The Board shall comprise:
- (a) an independent Chairman; and
  - (b) subject to Article 22.2, not less than one and not more than three Member Directors to represent Members; and
  - (c) subject to Article 22.2, not less than one and not more than three Consumer Directors to represent the interest of consumers.

### Equality of representation

- 22.2 The number of Member Directors and the number of Consumer Directors must at all times be equal.

### Appointment of Directors

- 22.3 With effect from 1 January 2010, any vacancy in the office of a Director (whether by virtue of the Act or any other provision of this Constitution) will be dealt with as follows:



- (a) where the office of the independent Chairman is vacant, the Directors must appoint a person to be the independent Chairman after:
  - (i) consulting relevant industry and consumer bodies about the appointment; and
  - (ii) using their best endeavours to ensure that no person is appointed as the Chairman who has a material interest which might conflict with their duties as independent Chairman;
- (b) where the office of a Member Director is vacant, the Directors must appoint a person with experience in and knowledge of one or more sectors of the Financial Services Industry, but only after consulting with and having due regard to the views of such industry and consumer organisations (including key industry bodies) as the Directors consider appropriate in order to give proper consideration to the person's experience and knowledge, independence, capacity and willingness to consult with the Financial Services Industry;
- (c) where the office of a Consumer Director is vacant, the Directors must appoint a person who has an interest in, and is knowledgeable about, consumer interests relevant to the Credit Ombudsman Services, but only after consulting with and having due regard to the views of such individuals and organisations (including key consumer and community organisations) as the Directors consider appropriate in order to give proper consideration to the person's expertise in consumer affairs, independence, capacity and willingness to consult with consumer organisations, and knowledge of issues pertaining to the Financial Services Industry.

### **Casual vacancies**

22.4 The Directors may appoint a person to fill a casual vacancy. Such a person holds office for the remainder of the period during which his or her predecessor would have held office and is entitled to be re-appointed at the end of that period in accordance with Article 22.3.

### **Directors' Fees and Expenses**

22.5 The Directors shall be paid such Directors' Fees as the Board from time to time determines.

22.6 Each Director is entitled to be paid all travelling, accommodation and other expenses reasonably and properly incurred in performing his or her functions, exercising his or her powers, or discharging his or her duties as a Director.

### **Eligibility for appointment**

22.7 In addition to Article 22.3, a person will only be eligible for appointment to the Board if he or she:



- (a) is not currently or previously an insolvent under administration as defined in the Act or a partner of a person who is or has at any time been an insolvent under administration as defined in the Act or who has otherwise taken the benefit of the laws relating to insolvency;
- (b) is not currently or previously a director or officer of a corporation which is or has at any time been an externally-administered body corporate as defined in the Act or under any form of external administration for the purposes of the Act;
- (c) is not a person who is or has at any time been subject to any form of external legal administration;
- (d) is not a person who has had an occupational licence or other authority to carry on business cancelled or suspended for any reason whatsoever other than a cancellation and reissue to correct an administrative error; and
- (e) is a person whose standing and authority in the community generally is such as to give credibility to the Board and the Credit Ombudsman Service.

22.8 A Director must satisfy the criteria for eligibility referred to in Article 22.7 on his or her appointment and at all times during his or her term of office.

### **Tenure**

22.9 Each Director (including the Chairman) holds office for a period of three years (each a 'term') from the date of appointment, and is eligible for re-appointment for another term.

22.10 Each Director (including the Chairman) holds office for no more than three terms and will not be eligible for re-appointment at the end of the third term.

### **Resignation**

22.11 Any Director may resign office by delivering a notice in writing to that effect to the Secretary. Any such resignation takes effect immediately unless the notice states that resignation is to take effect at some future time. In every case resignation must take effect not less than three months after the date of delivery of the notice to the Secretary.

### **Vacation of office**

22.12 In addition to the circumstances in which the office of Director becomes vacant by virtue of the Act or any other provision of this Constitution, the office of a Director becomes automatically vacant if the Director:



- (a) is or becomes mentally incapacitated or the Director's estate is or becomes liable to be dealt with in any way under laws relating to mental health; or
- (b) is absent for more than three consecutive meetings or three meetings in every consecutive five meetings of the Board without prior leave of the Board; or
- (c) is or becomes an insolvent under administration as that term is defined in the Act; or
- (d) is or becomes prohibited from being a director of a corporation by reason of any action taken or order made under the Act; or
- (e) is or becomes a director or officer of a Member that is a corporation that is or becomes an externally-administered body corporate as defined in the Act; or
- (f) is or becomes, or is or becomes a director or officer of a Member that is a corporation and that is, a party against whom a Direction to Comply has been issued under Article 38 and who has not complied in full with that Direction to Comply within the time specified therein for compliance.

#### **Inequality of representation at Board meetings**

22.13 Any meeting of the Board may proceed to business notwithstanding that there is an unequal number of Member Directors and Consumer Directors. However where there is an inequality of representation, those Directors (other than the Chairman) comprising the majority must agree amongst themselves as to the votes to be cast and may cast only such number of votes as equals the number of votes able to be cast by those other Directors (other than the Chairman) who comprise the relevant minority.

22.14 However nothing in Article 22.13 requires that any particular vote for or against be cast, and Article 22.13 relates only to the number of votes that may be cast.

#### **Alternate Directors**

22.15 Any Member Director or Consumer Director may appoint another person approved by the Board to be that Director's alternate Member Director or alternate Consumer Director (as the case may be) in that Director's place for such period as that Director is unable to act as such.

22.16 Where an alternate Director has been appointed and the Director appointing the alternate Director will be absent from one or more meetings of the Board, that alternate Director is entitled:

- (a) to be given notice of the Board meetings that the appointing Director will not attend; and

- (b) to attend and vote at those meetings, and otherwise to exercise all the powers and perform all the duties of a Director other than the power to appoint another or further alternate Director.
- 22.17 An alternate Director ceases to hold office immediately upon the appointing Director cancelling the appointment, ceasing to hold office or being removed from office.
- 22.18 Every instrument appointing or cancelling the appointment of an alternate Director must be in writing, signed by the Director making the appointment or cancellation as the case may be, and must be lodged with the Secretary promptly.
- 22.19 An alternate Director must satisfy the eligibility criteria set out above both at the time of appointment and at all times during the alternate Director's term of office.
- Chairman's Deputy
- 22.20 The Chairman may at any time and from time to time appoint a Chairman's Deputy for the purpose of:
- (a) representing the Chairman at any meeting of the Board that the Chairman is unable to attend; or
  - (b) the performance of any duty, exercise of any power or discharge of any function for and on behalf of the Chairman.
- 22.21 The Chairman's Deputy must:
- (a) be free from any interest that might materially interfere with his or her duties as the Chairman's Deputy; and
  - (b) have at least five years senior executive experience in banking, finance or business, or a legal practitioner with not less than five years experience specifically in the area of banking or finance; and
  - (c) not currently or within three years prior to his or her appointment:
    - (i) a Member of the Company; or
    - (ii) a director or employee of a Member of the Company; or
    - (iii) a director, employee or member of any industry body representing Financial Services Providers.
- 22.22 The Chairman's Deputy holds office at the will of and at the direction of the Chairman.

## 23 Functions, Powers and Duties of the Board

- 23.1 The Board's functions and powers include but are not limited to the following:



- (a) discharge responsibility for the overall supervision of Credit Ombudsman Service;
  - (b) make Rules for the purposes of Credit Ombudsman Service, and other rules or By-laws for the purposes of the Company and at any time and from time to time suspend the operation of any one or more Rule or By-law;
  - (c) for the purposes of Credit Ombudsman Service, appoint the Credit Ombudsman;
  - (d) determine the budget for Credit Ombudsman Service;
  - (e) promote consultation about proposals for substantive changes to the Credit Ombudsman Service Rules;
  - (f) receive and consider complaints about the operation of the Credit Ombudsman Service;
  - (g) monitor general trends and issues arising from complaints made to the Credit Ombudsman Service, including those that fall outside the Credit Ombudsman Service Rules;
  - (h) monitor and, where appropriate, report systemic issues arising from complaints made to Credit Ombudsman Service;
  - (i) as required by this Constitution, report systemic issues involving a particular Member or particular Members, and serious misconduct by a Member in relation to Financial Services, to ASIC;
  - (j) monitor the ability of Credit Ombudsman Service to manage its own caseload and to perform other promoted functions;
  - (k) oversee and monitor practices and procedures of Credit Ombudsman Service;
  - (l) preserve the independence of the complaint resolution process, and in particular, ensure that the Credit Ombudsman and his or her staff are entirely responsible for the handling and determination of complaints; and
  - (m) do any other act or thing provided for or contemplated by the Constitution or otherwise in furtherance of the Company's objects.
- 23.2 Whenever the Board exercises any discretion or power or performs any function or carries out any duty, allowed, provided for or imposed under this Constitution, it may:
- (a) in doing so, impose such terms and conditions as it sees fit;
  - (b) at any time and from time to time vary or revoke any terms and conditions imposed; and
  - (c) do so at any time and from time to time.
- 23.3 If the Board is satisfied that the exercise of any discretion or power by it or the performance of any function or the carrying out of any duty by it:

- (a) was induced by or is tainted by any fraud, material misstatement or non-disclosure, or any other conduct of a misleading or deceptive nature of or by any person; or
  - (b) by reason of a change in material circumstances, has become inappropriate, frustrated or otherwise incapable of being fully and effectively exercised, performed or carried out as intended, the Board may take such action as it sees fit to give full effect to the Board's intentions, including but not limited to:
    - (i) revoking or terminating any approval; and
    - (ii) re-exercising in whole or in part any discretion previously exercised whether in whole or in part.
- 23.4 The Company's business and affairs shall be vested in and managed by the Board which may exercise all those powers of the Company which are not by the Act or by this Constitution otherwise required to be exercised by the Company in general meeting.
- 23.5 The Board has, to the exclusion of the Company in general meeting, the power of and responsibility for the management and control of the income, funds and assets of the Company and the operations of Credit Ombudsman Service.
- 23.6 The Board may at any time and from time to time:
- (a) engage on such terms and conditions and with such powers and authorities and duties as the Board may from time to time determine, and dismiss, any employee, agent or consultant; and
  - (b) delegate any of its powers, functions or duties to subcommittees consisting of at least an equal number of Member Directors and Consumer Directors and upon such terms and conditions as the Board sees fit, and may determine the quorum of any such subcommittee, and may withdraw all or any such delegations.

## 24 Practice Notes

- 24.1 The Board may at any time and from time to time issue a Practice Note on particular issues or procedures in relation to Credit Ombudsman Service and may withdraw or amend or re-issue such Practice Note at any time and from time to time.

## 25 Guidelines to the Credit Ombudsman Service Rules

- 25.1 The Board may at any time and from time to time issue Guidelines to the Rules of the Credit Ombudsman Service on particular issues or policies in relation to, among other things, the consideration and handling of a complaint by the Credit Ombudsman Service, and may withdraw or amend or re-issue such Guidelines at any time and from time to time.



## 26 Co-Operation with External Dispute Resolution Schemes

- 26.1 The Board may at any time and from time to time enter into, vary, and terminate such agreements or arrangements as it deems fit with other external dispute resolution schemes or other entities providing support services to or facilitating the operation of external dispute resolution schemes to better achieve the resolution of disputes between consumers and Members or for any other reason that the Board deems appropriate.

## 27 Proceedings of the Board

### Meeting Procedures

- 27.1 The Chairman may at any time, and the Secretary must, on the requisition of any two Directors, summon a meeting of the Board.
- 27.2 Subject to the provisions of this Constitution, the Board may meet for the dispatch of its business or adjourn or otherwise regulate its meetings as it sees fit.
- 27.3 The Board must meet at such place and at such time and date as the Chairman determines.
- 27.4 Subject to this Constitution, every question arising at a meeting of Directors must be decided by a majority of votes cast at that meeting. In the case of equality of votes, the Chairman shall have and may exercise a second and casting vote.

### Quorum

- 27.5 The quorum necessary for the transaction of business of the Board is at least three Directors comprising the Chairman and at least one Member Director and one Consumer Director.

### Presiding Officer

- 27.6 The Chairman shall preside at every meeting of the Board. If for any reason the Chairman is absent, or unwilling, or unable to act as Chairman within 20 minutes from the time appointed for the holding of a meeting, the Chairman's Deputy shall preside as Chairman of the meeting.

### Notices of Board meeting

- 27.7 Not less than five business days notice shall be given of every meeting of the Board, and every such notice must specify the time and place and nature of the business to be dealt with at that meeting.
- 27.8 Where the Chairman is of the view that it is necessary so to do, the Chairman may convene a meeting of the Board on less than 5 business days notice.



### **Defective appointment**

27.9 Every act or decision of a Director is valid even though it is later determined that there was some defect in the Director's appointment or that any such person was disqualified or not qualified to act.

### **Means of communication**

27.10 The Board may meet at such place and by such means as it sees fit consistent with the objective of ensuring that every Director has a proper opportunity to participate in the Board's deliberations. The fact that any Director is not present with the other Directors at the same time is to be disregarded.

27.11 Where all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a particular resolution in terms set out in that document, then a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on, and at the time at, which the document was last signed by a Director.

27.12 For the purposes of Article 27.11, any two or more documents in identical terms and signed by one or more of the Directors together shall be deemed to constitute one document containing a statement in those terms signed by the Board.

27.13 However a reference in this Article 27 to all the Directors does not include a reference to a Director who at that particular meeting of Directors, is not entitled to vote on the resolution.

### **Public Communications**

27.14 Subject to Article 27.15, the Chairman shall have exclusive power and authority to make any and all Public Communications on behalf of the Company.

27.15 The Chairman may at any time and from time to time delegate power and authority to make Public Communications on behalf of the Company to the Chairman's Deputy, another Director of the Company, the Secretary, or any other person. Any such delegation must be in writing and may be withdrawn by the Chairman at any time.

27.16 Where the Chairman is unable by reason of ill health from making Public Communications on behalf of the Company, the Chairman's Deputy shall exercise the power and authority conferred by Article 27.14.

## 28 Conflicts of Interest

### Contracts

- 28.1 Despite any rule of law or of equity to the contrary, no Director is disqualified by reason of holding that office from entering into a contractual arrangement with the Company and no such contract is, or is to be, regarded as avoided.
- 28.2 No Director who enters into a contract with the Company is liable to account to the Company for any profit realised by that contract by reason not only of the fact that the Director held that office or because of the fiduciary relationship so established.
- 28.3 Every Director interested in a contract with a company must disclose the nature of that Director's interest at a meeting of the Board at which the contract is to be considered or decided on.
- 28.4 A Director may not be present or heard in discussion on, or propose or second a resolution concerning, or vote as such with respect to any contract or matter in which the Director is interested or is prohibited by the Act from doing so.

### General notice of interest

- 28.5 A general notice given by a Director to the Board that that Director is an officer, member, or otherwise interested in, any specified firm or corporation or is to be regarded as interested in all transactions with a particular firm or corporation is satisfactory disclosure as required by the Act. Any Director who gives such a general notice is not required to give a special notice relating to any transaction concerning the firm or corporation that has been previously notified to the Board.

### Holding of another office

- 28.6 A Director may be or become a director or officer or otherwise interested in a corporation promoted by the Company or a corporation in which the Company may be interested or a corporation that holds any membership in the Company.
- 28.7 The Company may not call upon any such Director to account for, or disgorge, any remuneration or other benefit received by that Director in that capacity.

### Holding shares in another corporation

- 28.8 Where the Company holds shares in another corporation, the Board may exercise the voting power conferred by the holding of those shares in such manner and at such times as the Board thinks fit.



### Director of wholly owned subsidiary

28.9 A Director who is or becomes a director of a wholly owned subsidiary of the Company must at all time act in the best interest of the Company.

## 29 Internal Dispute Resolution

29.1 Every Member must at all times maintain internal dispute resolution procedures that comply with standards and requirements made or approved by ASIC\* from time to time.

*\*ASIC's Regulatory Guide 165*

## 30 Credit Ombudsman

30.1 The Board may at any time and from time to time appoint a person as Credit Ombudsman for the purposes of the Credit Ombudsman Service Rules.

30.2 To be eligible to be appointed as Credit Ombudsman a person must:

- (a) have broad experience in legal adjudication or in facilitating, negotiating or mediating the resolution of disputes or be a barrister or solicitor of not less than five years standing;
- (b) be able to become well informed about and to make objective and independent decisions on, the subject matter of a dispute;
- (c) be able to exercise sound and fair judgment;
- (d) be able to command the respect of the parties; and
- (e) be free from any interest that might materially interfere with his or her duties as Credit Ombudsman.

## 31 Delegation

31.1 The Credit Ombudsman may appoint another person who is not a Member to perform, and may delegate to that person, all or any of his or her powers, functions and duties except the power to make a Determination or Award or Order and this power of delegation.

31.2 During any period in which the Credit Ombudsman is absent as a result of taking leave or through illness or in a circumstance in which a conflict of interest may arise, the Board may appoint a Deputy Credit Ombudsman to act in place of the Credit Ombudsman.

## 32 Immunity from Liability

32.1 Each Member agrees not to take legal action, and not suffer or permit any of its employees, agents, servants or contractors to take legal action, against the Company, its directors, officers or employees or persons



exercising a power or discretion or making a decision regarding a complaint under the Credit Ombudsman Service Rules for anything done in accordance with any requirement of this Constitution, the Credit Ombudsman Service Rules (including the publication of information or data), ASIC or any relevant regulator.

### 33 Special and Periodic Reporting

- 33.1 The Board must report to ASIC in the manner and at the times required by ASIC in relation to any systemic, persistent or deliberate conduct such as:
- (a) systemic issues (being either an issue arising out of a single complaint but having implications which extend beyond the parties to the particular complaint (e.g. how interest is calculated or a fee applied), or an issue arising from multiple complaints which are similar in nature (e.g. inadequate disclosure, improper interpretation or application of standard terms, or where a particular intermediary has mis-sold financial products to a number of consumers); and
  - (b) serious misconduct (e.g. conduct by a Member which involves fraud, gross negligence or inefficient conduct, or which is a wilful or flagrant breach of a relevant law).
- 33.2 The Board may also report to ASIC and any relevant industry body on the occurrence of any of the following:
- (a) the resignation of the Member as a member of the Company;
  - (b) the cancellation of the Member's membership of the Company;
  - (c) the expulsion or suspension of the Member from membership of the Company pursuant to Article 10;
  - (d) the non-payment of any Fee by the Member;
  - (e) the failure by the Member to comply with an Order, Award or Direction to Comply; or
  - (f) the failure of a Member to comply with any provision of this Constitution, or obligation imposed by the Credit Ombudsman Service Rules, Guidelines to the Credit Ombudsman's Rules or any By-law made by the Board.
- 33.3 The Board must report to ASIC any case of serious misconduct by a Member or any systemic issue in relation to a particular Member in respect of any complaint or dispute and, subject to Articles 33.4 and 33.5, name the Member concerned.
- 33.4 If the Board after consultation with the Member concerned is satisfied that a systemic issue has been rectified and is unlikely to recur, the Board may determine to not identify the Member concerned but to include all

required information (other than information identifying the Member concerned) in its Quarterly Report as provided for under this Article 33.

- 33.5 Before the Board reports an allegation of serious misconduct or a systemic issue in relation to a particular Member, it must first notify the Member concerned of the matter and provide to the Member an opportunity (being not less than 30 days) to advise the Board why it should not report the matter to ASIC. In considering whether or not to report an allegation of serious misconduct notwithstanding the representations of a Member, the Board must afford the Member all necessary procedural fairness.
- 33.6 The Board must within 21 days or such longer period as ASIC may from time to time allow, after 31 March, 30 June, 30 September and 31 December in each year provide to ASIC a Quarterly Report of any systemic issues dealt with by Credit Ombudsman Service. Except where this Article 33 has otherwise been complied with, the Quarterly Report must not identify any specific Member but must provide sufficient information so that ASIC understands the nature of the particular matter and the manner in which it was remedied.
- 33.7 Nothing in this Constitution or the Credit Ombudsman Service Rules requires the Board or Credit Ombudsman Service to conduct any independent investigation or enquiry into the subject matter of any complaint. The Board will collect, record and report such information as ASIC may stipulate from time to time.
- 33.8 Each and every Member hereby provides his, her or its express consent to the publication of information, documents and other material by the Company as contemplated by this Constitution or the Credit Ombudsman Service Rules and hereby expressly waives and forever releases any rights such Member may otherwise have to bring action with respect to such publication whether by suit in defamation or other cause of action whatsoever.
- 33.9 For the purposes of Article 33.8, every Member that is a corporation must obtain at the time of applying for membership and maintain at all times thereafter, a written waiver from each person who is or becomes an Officer of that Member to the same effect as Article 33.8 provided always that the failure of a Member to obtain a written waiver shall not prejudice or otherwise affect any provision of this Constitution or any action taken under this or with the authority of this Constitution so far as it applies to the Member that is a corporation.

## **34 Board's Annual Report on Credit Ombudsman Service**

- 34.1 Subject to relevant legal constraints including constraints as to privacy, the Board will publish an Annual Report on the operations of the Credit Ombudsman Service Rules within five months after the end of each full calendar year. The Annual Report must contain a comprehensive summary and analysis of the following matters:
- (a) the number of complaints and enquiries received;



- (b) demographics of complainants (where practicable);
- (c) the number of complaints received that were not covered by Credit Ombudsman Service (with reasons);
- (d) the Credit Ombudsman Service's current caseload including the age and status of open cases;
- (e) the time taken to resolve complaints; and
- (f) the profile of complaints to enable identification of:
  - (i) the type of financial product or service involved;
  - (ii) the product or service provider;
  - (iii) the purpose for which the financial product or service was obtained;
  - (iv) the underlying cause(s) of the complaint; and
  - (v) any systemic issues or other trends.

34.2 The Annual Report will be made available to ASIC and such other organisations, industry organisations and relevant stakeholders as may be determined by the Board for the purpose from time to time.

34.3 The Board may publish the Annual Report on the Company's web site.

## 35 Review

35.1 The Board will, not more than five years after the date of publication of a previous review commissioned under this Article 35 or within such longer period or on such other basis as ASIC may allow or prescribe, commission an independent review of the operations of Credit Ombudsman Service. This review will address:

- (a) whether Credit Ombudsman Service meets ASIC's policies and requirements in relation to external dispute resolution schemes approved by ASIC;
- (b) the satisfaction levels of consumers and Members with the operations of Credit Ombudsman Service;
- (c) the effectiveness, fairness and independence of Credit Ombudsman Service;
- (d) public awareness of access to Credit Ombudsman Service; and
- (e) such other issues as may be identified in consultation between the Board and ASIC.

35.2 The review will be made available to ASIC, Members, and such consumer organisations, industry organisations and relevant stakeholders as the Board may determine for the purpose from time to time.

35.3 The Board will publish the review referred to in Article 35.1 on the Company's web site.



## 36 Publicity

- 36.1 The Board will ensure that Credit Ombudsman Service is appropriately publicised.

## 37 Amendment to the Credit Ombudsman Service Rules and the Constitution

- 37.1 Subject to Article 37.2, the Credit Ombudsman Service Rules may be amended by the Board after consultation with MFAA, ASIC, and such consumer organisations, industry organisations and relevant stakeholders as may be determined by the Board for the purpose from time to time.
- 37.2 Where Board proposes a Minor Amendment to the Credit Ombudsman Service Rules, the Board need only consult with MFAA and ASIC prior to making the amendment.
- 37.3 No Substantive Amendment to this Constitution may be voted on by Members unless the amendment is proposed by the Board after consultation with MFAA, ASIC and such consumer organisations, industry organisations and relevant stakeholders as may be determined by the Board for the purpose from time to time.
- 37.4 For the purposes of this Article 37:
- (a) "Minor Amendment" means any amendment to the Rules which is not a Substantive Amendment; and
  - (b) "Substantive Amendment" means any amendment to the Credit Ombudsman Service Rules or this Constitution which:
    - (i) results from or is required by a change to any relevant regulatory guide issued by ASIC from time to time;
    - (ii) in the opinion of the Board, ASIC or MFAA alters or adversely impacts upon any rights of consumers under the Credit Ombudsman Service Rules; or
    - (iii) in the opinion of the Board, ASIC or MFAA raises such policy issues in the context of the Financial Services Industry as requiring wider consultation with persons interested in that industry.

## 38 Enforcement of the Credit Ombudsman's Awards

- 38.1 Where a Member fails to comply in full with the Credit Ombudsman's Award or Order, the Credit Ombudsman must as soon as practicable report that failure to the Secretary on behalf of the Board. As soon as practicable after a notification by the Credit Ombudsman of a Member's failure to comply in full with the Credit Ombudsman's Award or Order, the Secretary on behalf of the Board must issue a Direction to Comply to the Member in default.
- 38.2 A Direction to Comply must:



- (a) describe the act of non-compliance;
- (b) permit the Member fifteen business days, or such longer period as the Board may determine as reasonable in the circumstances, to comply with the Credit Ombudsman's Award or Order, and
- (c) notify the Member that if the Credit Ombudsman's Award or Order is not complied with in full by the date appointed for the purpose, the Board will, subject to any necessary prior written notification to ASIC forthwith proceed to take such action required under this Constitution to expel the Member from membership of the Company.

38.3 Where a Member has failed to comply in full with a Direction to Comply within the time specified therein for compliance, the Board will, subject to any necessary prior written notification to ASIC, forthwith proceed to take action to expel the Member from membership of the Company.

38.4 The Company may recover from a Member any moneys due and payable by that Member pursuant to an Award in relation to that Member ("the Debt") as if the Debt were a debt due and payable by the Member to the Company.

## 39 Chief Executive

39.1 The Board may appoint a Chief Executive upon such terms and conditions, and with such powers, duties and functions as the Board thinks fit.

39.2 Where a Chief Executive is appointed, that person must attend every meeting of the Board except where the Board otherwise allows or directs.

39.3 Except where a Chief Executive is appointed by the Board, the Chairman shall act as Executive Chairman of the Company and shall have, exercise and perform all powers, functions and duties necessary or desirable for the efficient and effective management of the Company.

## 40 Secretary

### Appointment

40.1 The Board must in accordance with the Act appoint one or more Secretaries, each of whom must be a natural person and one of whom must be a person ordinarily resident in Australia for such term and at such remuneration and upon such conditions as the Board thinks fit. A Secretary so appointed may be removed by the Board.



## 41 Seal

### Use of Common Seal

41.1 The Company's Common Seal may only be affixed to a document with the approval of the Board.

### Method of execution by Common Seal

41.2 Every document to which the Company's Common Seal is to be affixed must be affixed in the presence of the Chairman and a Director, or the Chairman and the Secretary.

41.3 No person may sign in more than one capacity.

## 42 Notices

42.1 Where by this Constitution, the Act or any other legislation a document is required or permitted to be served on, given, sent or dispatched to any person ("served"), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it by post, courier, electronic means or otherwise to:
  - (i) the person's residential address, or
  - (ii) the business address of the person as last known to the person serving the document; or
  - (iii) in the case of a Member, to the address of the Member entered in the Company's Register of Members; or
- (c) subject to the Act or other legislation, by publication in a relevant newspaper.

42.2 A document served under Article 42.1 is deemed served:

- (a) where Article 42.1 applies, on the day following the day of dispatch; and
- (b) where Article 42.1 applies, on the day the newspaper is first published.

42.3 Subject to the Act, where a specified number of days or a period of notice is required to be given, the day of service and the date of expiry of the notice are included in the calculation.

42.4 Every document required to be served on the Company, or any officer of the Company, may be served by leaving it at the registered office of the Company.

42.5 The signature to any document to be given by the Company may be written, printed or stamped.

## 43 Indemnity

- 43.1 To the extent permitted by the Act, each officer of the Company and each officer of a related corporation of the Company must be indemnified by the Company against any liability incurred by that person in that capacity.
- 43.2 The Company may at any time pay premiums in respect of insurance in favour of a person (whether with others or not) who is an officer of the Company against any liability incurred by that person as such an officer or as an officer of a related corporation. Any such premium paid is in addition to and not to be regarded as part of the Director's Fees or other remuneration payable to that person by the Company.

## 44 Replaceable Rules

- 44.1 The operation of each of the sub-sections of the Act which are defined as Replaceable Rules apply to the Company except to the extent that they are displaced, inconsistent with or modified by this Constitution. To the extent the Replaceable Rule is displaced, inconsistent or modified by this Constitution, the Replaceable Rule does not apply to the Company.

## 45 Dictionary

### Definitions

- 45.1 In this Constitution unless that contrary intention appears:

"Act"	means the Corporations Act 2001 of the Commonwealth
"Alternate Director"	means an alternate Member Director or alternate Consumer Director appointed under this Constitution
"Annual Fee"	means the fee referred to in Article 8.3
"Application Fee"	means the fee referred to in Article 8.1
"Article"	means a provision of this Constitution
"ASIC"	means Australian Securities and Investments Commission or its successor in title
"ASIC Act"	means the Australian Securities and Investments Commission Act 2001

"Award"	means an award made pursuant to the Credit Ombudsman Service Rules
"Board"	means the Board of Directors of the Company
"Chairman"	means the person appointed under Article 22.1(a)
"Chairman's Deputy"	means the person appointed under Article 22.20
"Chief Executive"	means the person appointed as Chief Executive under Article 39.1
"Company"	means Credit Ombudsman Service Limited
"Constitution"	means the Constitution of the Company as amended and in force from time to time
"Consumer Director"	means a person appointed under Article 22.3(c)
"Credit"	means any form of credit or financial accommodation
"Credit Ombudsman"	means the person for the time being appointed to and occupying the position of Credit Ombudsman pursuant to this Constitution
"Credit Ombudsman Service Rules"	means the rules made by the Board for the purposes of the Credit Ombudsman Service
"Credit Ombudsman Service"	means Credit Ombudsman Service established under this Constitution and the Credit Ombudsman Service Rules
"Direction to Comply"	means a direction issued under Article 38 to a Member to comply with an Order or Award
"Director"	means any director of the Company and includes the Chairman, the Chairman's Deputy (whilst appointed and acting as such), a Member Director, a Consumer Director and as appropriate an Alternate Director
"Fee"	means any Application Fee, Annual Fee, Service Fee or Prescribed Fee payable by a Member
"Financial Services"	mean:  (a) any financial service within the meaning of section 766A of the Corporations Act 2001 or



	<p>12BAB of the ASIC Act; or</p> <p>(b) any credit activity, credit service or credit assistance within the meaning of the National Consumer Credit Protection Act 2009; or</p> <p>(c) the taking of, or the conduct of the Member in relation to, a guarantee or security for financial accommodation provided by the Member; or</p> <p>(d) the exercise of rights under a loan agreement or guarantee by, or the conduct of, a Member who is a debt collection agency, invoice discounter, factor or debt agreement administrator; or</p> <p>(e) where the Member is a mutual, the provision of, or the conduct of the Member in relation to, a financial product issued or provided by a third party through the agency of the mutual; or</p> <p>(f) the provision of, or the conduct of the Member in relation to budget monitoring, mortgage minimisation services, credit management and debt recovery.</p>
"Financial Services Industry"	means the Financial Services industry in Australia and any similar or related or associated industries in which the Members and their related bodies corporate carry on business
"Financial Services Provider"	means a person who carries on a Financial Services business in Australia
"Guidelines"	mean the Guidelines to the Credit Ombudsman Service Rules, as approved by the Board
"Logo"	means any logo, mark, trademark, design, letterhead or other representation whatsoever approved by the Board or of, or referring to, the Company, Credit Ombudsman Service, or the Credit Ombudsman
"Member"	means a person for the time being entered on the Register of Members
"Member Director"	means a person appointed under Article 22.3(b)
"Membership Renewal Notice"	means the notice referred to in Article 8.4

“ MFAA”	means the Mortgage and Finance Association of Australia
“Officer”	has the meaning specified in the Act
“Order”	means an order issued by the Credit Ombudsman pursuant to the Credit Ombudsman Service Rules
“Prescribed Fee”	means the fee referred to in Article 8.8
“Public Communication”	means any statement, media release or other communication to the public including but not limited to MFAA, ASIC, any other Government Department or instrumentality, the media, consumer representatives or any section of the public
“Register of Members”	means the register of Members required to be kept by the Company pursuant to the Act
“Representative”	means a natural person appointed under the Act or under Article 11.1 by a Voting Member which is a body corporate, to represent it at a general meeting of the Company
“Secretary”	means a person appointed as Secretary under Article 40.1
“Service Fee”	means the fee referred to in Article 8.6
“Voting Member”	<p>means any Member of the Company, but does not include a Member who has:</p> <ul style="list-style-type: none"> <li>(a) failed to pay any Fee due by that Member to the Company; or</li> <li>(b) given notice of its intention to resign pursuant to Article 9.1; or</li> <li>(c) ceased to be a Member pursuant to Article 9.3; or</li> <li>(d) been expelled or suspended pursuant to Articles 10.1 and 10.1(B), respectively.</li> </ul>

## Interpretation

- 45.2 In this Constitution unless the contrary intention appears:
- (a) words importing one gender include all other genders;
  - (b) words importing the singular include the plural and vice versa; and
  - (c) any reference to a statute or code or any provision thereof means the statute, code or provision as modified or amended and in operation from time to time or any substitution of such statute or code and includes any regulation or rule for the time being in force pursuant to that statute, code or provision.

## 46 Transitional

- 46.1 Except where this Constitution provides otherwise, every appointment, agreement or arrangement made by the Company or the Board, and every rule (including but not limited to the Credit Ombudsman Service Rules), By-law, Practice Note, order, resolution or approval made, issued, determined, passed or given or other action whatsoever by the Company or the Board, shall remain in full force and effect in accordance with its tenor notwithstanding any amendment of this Constitution or any Article.

