

EXPLANATORY NOTE

Community Bank Constitution – 2020 Pro Forma update (1 July 2020)

Introduction

Bendigo and Adelaide Bank Limited (**BEN**), in consultation with the Community Bank National Council, has undertaken a comprehensive review of the 2008 version of the pro forma Community Bank constitution. BEN has also obtained legal advice from one of its panel law firms as part of the review of the pro forma constitution.

Outcome of review

The review has resulted in various amendments to the pro forma Community Bank constitution. These can be summarised as follows:

- (1) updates to formatting;
- (2) changes to reflect suggested improvements (based on current best-practice);
- (3) changes to reflect changes in law; and
- (4) specific changes to rule 9.

Further details of key changes

The following explanatory comments provide more detail of each category of changes:

(1) Changes to formatting

The changes to formatting are largely to include auto-cross referencing, to make the document more user-friendly.

(2) Changes to reflect improvements (based on current best-practice)

This is the largest category of amendments, which bring the pro forma constitution in line with changes in best practice since 2008.

These updates include minor re-wording and additions to clauses, as well as a number of additions that reflect changes to best practice but not a change in the law. Examples include:

- the addition to **Rule 29** (dealing with the refusal to register a transfer of shares);
- the addition of **Rule 50(3)** (to set out a more detailed procedure for incomplete or incorrectly executed proxy forms);
- the amendments to **Rule 76** (dealing with written resolutions of directors); and
- the amended **Rule 87** (regarding in-specie distributions of assets).

(3) Changes to reflect a change in law

There are a few instances where amendments have been made to deal with a change in law. In particular:

- **Former clauses 23-25, 27(ii), 27(iii)**, regarding the company taking out a lien. References to a company's ability to take out a lien or charge over shares of a shareholder have been deleted throughout the pro forma constitution on the basis that these provisions may contravene s259B of the Corporations Act (the provision which provides that a company must not take security over shares in itself or a company that it controls).
- **Former clause 94(1)-(3), now clause 99**, regarding the winding up of the company. The clause has been simplified on the basis that a company and its members now generally rely on section 501 of the Corporations Act, such that any surplus on a

winding up will be distributed among the members according to their rights and interests.

(4) Specific changes to rule 9

The following specific amendments have been made to rule 9:

- **Additional Examples of Close Connection** – a number of suggested additional examples of 'close connection' in the note to Rule 9(2A) have been added.
- **Change to Base Number** - a minor alteration to Rule 9(2B) to include an option of 75% instead of 90% of the number of shareholders in the company.

Conclusion

The updated 2020 pro forma Community Bank constitution will be provided to all new Community Bank companies that are incorporated from 1 July 2020.

With regard to existing Community Bank companies, it is worth noting that while adoption of the 2020 pro forma Community Bank constitution is optional, the updated pro forma is considered by BEN to reflect current best practice and recommends that each Community Bank board review the document in consultation with their independent solicitor.

A copy of the 2020 pro forma constitution will be available to the Community Bank network via a folder entitled '**Community Bank Constitution (2020)**' in the [Community Company Resource Centre in SharePoint](#).

This folder will contain:

- (a) a marked-up copy of the 2020 pro forma constitution (which marks up the changes to the 2008 pro forma version of the Community Bank constitution¹);
- (b) a clean copy of the 2020 pro forma constitution; and
- (c) a copy of this Explanatory Note.

Please note: BEN strongly recommends that Community Bank companies seek advice and guidance from their independent solicitor in relation to any amendment to or replacement of their current constitution, and ensure they comply with all Corporations Act and ASIC requirements (including the passing of resolutions by shareholders and lodgement of relevant documentation with ASIC).

¹ Note: the marked-up 2020 pro forma Community Bank constitution has been compared against, and only shows changes to, the 2008 pro forma Community Bank constitution and **does not** reflect changes to earlier versions of the Community Bank constitution.