

## IMPORTANT NOTICE

Capricorn Mutual Limited (CML) is currently updating the "Rules of Capricorn Mutual". This document no longer forms part of the Product Disclosure Statement.

This document, together with the Constitution of Capricorn Mutual and the Product Disclosure Statement needs to be read prior to taking out any protection with CML.

The new Rules of Capricorn Mutual Limited will be updated on 1 July 2011 and will be available on the CML website [www.capricornmutual.com](http://www.capricornmutual.com) or direct from CML.



# RULES OF CAPRICORN MUTUAL LIMITED

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# RULES OF CAPRICORN MUTUAL LIMITED

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# RULES OF CAPRICORN MUTUAL LIMITED

## PART 1 INTRODUCTION

### RULE 1 CONSTITUTION

*Documents giving legal form to Capricorn Mutual.*

These Rules are to be read in conjunction with the Constitution of Capricorn Mutual Limited and, if one is issued in accordance with Rule 6(2), a Member's Schedule of Protection. The rules can be changed subject to Clause 64 of the Constitution. In the event of any inconsistency between the Constitution and these Rules, the Constitution will prevail.

### RULE 2 DEFINITIONS AND INTERPRETATIONS

*Explanation of words and expressions used in these Rules.*

#### Definitions 2(1)

In these rules the following words and expressions shall have the following meanings:

**1. Board**

The Board of Directors for the time being of the Mutual.

**2. Capricorn Society**

Capricorn Society Limited.

**3. Certificate of Membership**

A document or documents which evidence(s) a Member's membership of the Mutual.

**4. Closed Financial Year**

A financial Year of the Mutual, which the Board shall have declared to be closed in accordance with Rule 23.

**5. Contribution**

Any monies payable to the Mutual by a Member pursuant to Rule 6 and Rule 9.

**6. Documents**

Deeds, wills, agreements, maps, photographs, plans, models, records, written or printed books, letters, certificates or written or printed documents (including those visible on a computer screen) or forms of any nature whatsoever (excluding any forms of currency or negotiable paper) and recorded information for use with computer systems.

**7. Entry**

The admission of a Member to the Mutual and /or a Member to Protections.

**8. Financial Year**

1st July in one year to 30th June of the following year, or as determined by the Mutual from time to time.

**9. Managers**

The managers for the time being appointed by the Mutual.

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# RULES OF CAPRICORN MUTUAL LIMITED

## 10. Member

A person or entity that has been admitted to membership of the Mutual.

## 11. Member's Representative

An individual nominated by a Member to exercise the privileges of membership on its behalf (in the event of the member being a private company with limited liability).

## 12. Membership Year

The period of twelve months shown on the Certificate of Membership issued to a Member during which time the Member is eligible to apply for Protection or for additional Protection.

## 13. Motor Trader

A person who is a member of Capricorn Society in accordance with the rules of Capricorn Society.

## 14. Mutual

Capricorn Mutual Limited.

## 15. Period of Protection

In respect of each Member, the period defined in Rule 7 and, if issued, as stated in the Schedule of Protection of that Member, during which time the Member has Protection from the Mutual.

## 16. Product Disclosure Statement

The documents, which together form the Product Disclosure Statement, provided to each Member, during which time the Member has a right to have the Mutual consider the members claim for protection.

## 17. Protection

The membership benefits for personal and business risks which are offered to Members by the Mutual on a discretionary basis and which if accepted by the Mutual in accordance with Rule 6(2), are set out in a Member's Schedule of Protection.

## 18. Schedule of Protection

A document and any endorsement to it issued by the Mutual in its discretion in accordance with Rule 6 which evidences the scope and extent of the discretionary protections granted to a Member.

## 19. Subscription

The amount payable by a Member to join the Mutual.

## Interpretation 2(2)

The expression "writing" will include printing, typewriting, lithography, facsimile and any other mode or modes of representing or reproducing works in a visible form.

The expression "cease" or "cessation" will mean "discontinue" or "come to an end" or "discontinuance", "termination" or "ending" respectively.

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# RULES OF CAPRICORN MUTUAL LIMITED

The expression “delay” will mean “a refraining from something” and “waiver” will mean “the giving up of rights and/or interest, whether intentionally or not”.

The expression “discretion” will mean “a power or right of making a decision or of acting according to choice”.

The expression “indemnity” will mean “a compensation for damage or loss suffered”.

The expression “without prejudice” will mean “without damaging, giving up, affecting a legal right or interest”.

Words importing persons shall include individuals, partnerships, corporations and mutuals.

Any reference to the discretion of the Board and to any action to be taken as the Board thinks fit will be construed as a discretion to be exercised and action to be taken in the sole and absolute discretion of the Board.

## **RULE 3 DISCRETIONARY NATURE OF PROTECTIONS**

*The Board has the power and/right to make a decision concerning the Protections as the Board deems fit.*

### **Protections 3(1)**

The Protections which may be provided by the Mutual as set out in these Rules and, if issued in accordance with Rule 6(3) in the Member’s Schedule of Protection. The Protections provide a Member with the right to ask the Board to consider the Member’s claim against loss, damage, liability, cost or expense incurred by that Member for a Protection that is recorded on the Member’s Schedule of Protection. Any decision of the Board to accept a Member’s claim for Protection is at the sole and absolute discretion of the Board in accordance with Rule 18(2)(A). Any reference in these Rules or in any Schedule of Protection issued in accordance with these Rules to “protected risks “ or to “indemnity” or to “protection”, or any such similar expression must be read accordingly.

### **Payment 3(2)**

A Member is only eligible to make a claim for Protection if the Contribution for the Protection has been paid as specified in Rules 6 and 9 or in any Schedule of Protection issued in accordance with Rule 6(3).

## **RULE 4 MEMBERSHIP**

*Terms and conditions applicable to being accepted as Member and to Membership.*

### **Date of Membership 4(1)**

The Certificate of Membership will show the date on which membership of the Mutual commenced. This commencement date will be the date agreed by the Member and the Mutual.

### **Acceptance 4(2)**

Acceptance of any person or entity or the refusal of membership to any, person or entity is in the Board’s absolute discretion.

### **Acceptance 4(3)**

Membership of the Mutual is only valid when the Member has been accepted as a Member and the Member has paid the Subscription.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **RULE 5 RIGHT OF RECOVERY**

*Right of the Member to seek compensation for loss, damage, liability, cost or expense subject to conditions.*

### **Right 5(1)**

Subject always to Rule 3, a Member shall be entitled to seek recovery out of the funds of the Mutual of the amount of any loss, damage, liability, cost or expense which may be incurred by the Member in respect of the risks set out in Rule 13 to the extent and upon the terms, conditions and exceptions provided by these Rules and any Schedule of Protection.

### **Set-off 5(2)**

Without prejudice to any other provisions of these Rules, the Mutual shall be entitled to off set any amount due from a Member at any time against any amount agreed to be due to such Member from the Mutual.

## **PART II ENTRY TO MEMBERSHIP, APPLICATION FOR PROTECTION AND CONTRIBUTION**

*The terms and conditions applicable to admittance of a Member, applying for protection and renewing Membership and making Contributions.*

## **RULE 6 ENTRY**

*Details provided by the Member to be correct and true.*

### **Warranty 6(1)**

All particulars and information given in the course of applying for Membership and for Protection and the terms on which Membership or Protection is granted is deemed to form part of the terms of Entry between a Member and the Mutual and it shall be a condition precedent of such Entry that all such particulars and information are true and complete so far as the same are within a Member's knowledge or would with reasonable diligence have been ascertained by that Member.

### **Contents of Certificate of Membership**

#### **Certificate of Membership 6(2)**

The Mutual will issue a Certificate of Membership to each Member admitted to membership of the Mutual. The Certificate of Membership will show:

- (a) The name of the Member or Member's Representative;
- (b) The period of Membership;
- (c) The membership number;
- (d) The amount to be paid for the Subscription;
- (e) Any other matter that may be appropriate.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **Schedule of Protection 6(3)**

On receiving a written application from a Member, the Mutual may, in its absolute discretion, issue a Schedule of Protection which (subject to any special terms and conditions upon which the Member is protected) shall state:

- (a) The name of the Member or Member's Representative;
- (b) The Protections which the Member may claim from the Mutual and any exclusions which will apply;
- (c) The Period of Protection granted to the Member by the Mutual;
- (e) The limits of the Protection granted;
- (f) The excesses or deductibles applicable to the Member and any automatic reinstatements;
- (g) The Contributions due from the Member and/or any special terms as to such Contributions; and
- (h) Any other matters as may be appropriate.

## **Schedule of Protection subject to Rules and variations as agreed**

### **Subject to Rules 6(4)**

The terms and conditions upon which the Entry of a Member is accepted into the Mutual, including those relating to the nature and extent of the Protection given to the Member and the Contributions payable by the Member will be as set out in these Rules. The terms and conditions will be subject to any variations that may be agreed between the Member and the Mutual so long as the variations are permitted by the Rules. The terms and conditions and any variation to them will be set out in any Schedule of Protection issued to the Member.

The Member and the Mutual, may with each other's consent, vary the terms and conditions for the Entry.

### **Variation of Protection 6(5)**

If at any time the Mutual and the Member agree to vary the terms and conditions on which a Protection is granted to the Member, the Mutual shall as soon as reasonably practicable after the agreement issue a new Schedule of Protection recording such revised terms or conditions. If a Schedule of Protection has already been issued to such Member, the Member may be issued with an endorsement to the Member's Schedule of Protection stating the nature of the variation and the date from which the variation is to take effect.

### **Variation of Terms of Entry 6(6)**

The Member's Certificate of Membership together with the Member's Schedule of Protection is conclusive evidence of the terms of Entry and Protection between the Member and the Mutual.

## **RULE 7 PERIOD OF PROTECTION**

*Period of time during which the Protection is in place.*

### **Period of Protection 7(1)**

Unless these Rules say otherwise, the Period of Protection will begin on the date and at the time stated in the Member's Schedule of Protection. In the case of a variation in the Protection as a result of Member's notified change in personal or business circumstances the Member may be issued with

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# RULES OF CAPRICORN MUTUAL LIMITED

an endorsement to the existing Schedule of Protection in accordance with Rule 6(4) or may be issued with a new Schedule of Protection which will show the date and time for the start of the new Schedule of Protection and the date and time on which the new Schedule of Protection will expire.

If a new Schedule of Benefits is issued all Contributions paid or payable by a Member during the Period of Protection stated on that Schedule of Benefits will be accounted for in the books of account of the Mutual as belonging to the Financial Year during which each Period of Protection is deemed to commence in accordance with the provisions of this Rule.

## **Withdrawal of Entry 7(2)**

A Member may not withdraw from membership of the Mutual at any time or in any manner except:

- (a) in accordance with the provisions of the Rules; or
- (b) with the consent of the Mutual.

## **New period of Protection 7(3)**

Before the Period of Protection shown in the Member's Schedule of Protection expires, the Mutual will give the Member or the Member's Representative a written notification of the basis on which it will consider applications for renewal of the Protection and the Contribution payable by the Member for that Protection in the next Period of Protection.

The terms and conditions on which the Protection is agreed by the Mutual will be set out in the Product Disclosure Statement provided to the Member and in the Schedule of Protection. In the event that the terms or conditions have changed the Member will be provided with a new Product Disclosure Statement for consideration before the expiry of the existing Period of Protection.

If the Member wishes to renew the Protection for a new Period of Protection, the Member must apply to the Mutual on or before the expiry date stated in the Schedule of Protection. The Member is required to apply to renew the Protection for the next Period of Protection provided always that the Mutual may in its absolute discretion accept a late application for re-entry.

If Protection is granted to the Member for the new Period of Protection, the new Period of Protection will start immediately on the expiry of the existing Period of Protection and in accordance with the information and requests contained in the Member's application for renewal. Protection will be provided on the same terms and conditions set out in the Product Disclosure Statement and the Schedule of Protection, unless:

- (a) the Member completes an application asking for different Protections; or
  - (b) the Member completes an application form asking for different terms and conditions ; and
- the Board agrees to the Member's request.

Renewal of a Protection for a new Period of Protection is subject always to the Member having a current Certificate of Membership at the time the Period of Protection commences.

## **Cancellation of Protection by the Mutual 7(4)**

The Mutual may at its discretion give notice in writing to the Member or the Member's Representative before the end of the Period of Protection shown on the Member's Schedule of Benefits that the Mutual will cease to offer a Protection to the Member. In this event the Protection will cease at the date and time shown on the Schedule of Protection.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **Cancellation of Protection by a Member 7(5)**

A Member may not cancel a Protection during a Period of Protection without the consent of the Mutual and only on the terms and conditions that the Mutual in its discretion thinks fit.

A Member may apply to cancel a Protection at the expiry of a Period of Protection by giving notice to the Mutual three months prior to the expiry of the Period of Protection stated in the Schedule of Protection. In the event that the Mutual gives notice of a change to the terms under Rule 7(3) or a change in the level of contributions required, a member's Protection will cease where agreement cannot be reached prior to the expiry of the Period of Protection.

## **RULE 8 APPLICATION OF CONTRIBUTIONS**

*Contributions to the Funds are to be made by the Member and are used in the manner set out below.*

### **Use of Contributions**

#### **Use 8(1)**

Each Member shall contribute by way of Contributions to the funds required to meet:

- (a) The claims and other expenses or outgoings (whether incurred, accrued or anticipated) which at the discretion of the Board properly fall upon the Mutual in respect of a Financial Year;
- (b) Such costs or expenses as the Board thinks fit which are incurred by the Mutual in entering into or arranging insurance contracts or reinsurance contracts in respect of the Protections provided to Members under these Rules and any Schedule of Protection issued under Rule 6(2) and/or insurance of the Mutual occurring in respect of any Financial Year; and
- (c) Such transfers to reserves, provisions or escrow accounts as the Board may deem it expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be thought likely to occur in respect of any Financial Year.

#### **Source 8(2)**

Such Contributions shall be levied by means of Advance Contributions and Supplementary Contributions as defined in and governed by the provisions of Rule 9.

## **RULE 9 CONTRIBUTIONS**

*The Mutual decides on the amount of the Contributions.*

### **Contributions 9(1)**

The Member's Schedule of Protection will set out the annual Contribution for the Protection which the Mutual has decided. The Contribution may be altered in accordance with the provisions of Rule 6 and Rule 7.

### **Additional Contributions 9(2)**

The Board may at any time or times during or after the end of each Financial Year (but not after a Financial Year has been closed) make a call on Members for an additional contribution (the "Additional Contribution"). Any call for Additional Contribution to be paid by a Member for any Financial Year will be calculated at the discretion of the Mutual. All Additional Contributions will be calculated on a pro rata basis based on the Contributions paid for a Protection by the member (less any return of Contributions) in the relevant Financial Year. The maximum amount payable by a Member in Additional Contributions (other than by Capricorn Society) for any one Financial Year is limited to a maximum of 5% of the Contribution paid by the Member for the Protection in the relevant Financial Year.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **RULE 10 SUMS DUE TO THE MUTUAL**

*Terms and conditions applicable to making and not making of contributions.*

### **Time of Payment 10(1)**

Contributions or Additional Contribution may be paid in such instalments and on such dates as the Board may specify.

### **Notification 10(2)**

As soon as reasonably practicable after the rate of any Contribution and Additional Contribution has been fixed, the Mutual shall notify each Member or Member's Representative of:

- (a) The rate;
- (b) The date on which the Contribution concerned is to be paid by instalments, of the amounts of such instalments and the respective dates on which they are payable; and
- (c) The total amount payable by each Member.

### **Set-off 10(3)**

A Member shall not be entitled to set off the whole or any part of any potential Protections from the Mutual against the Contributions or other sums of whatsoever nature due to the Mutual, nor shall a Member be entitled to withhold or delay payment of any such Contributions or sums.

### **Penalty for late Payment 10(4)**

Without prejudice to the rights and remedies of the Mutual under Rule 20, if any Contribution or instalment or part the part of a Contribution or instalment, or any payment due from a Member, is not paid when it is due, the Board may order the Member to pay interest on the amount not paid. Interest may be calculated at the rate decided by the Board and will be calculated from the date when the member's payment was due.

When calculating the interest payable by the Member the Board will apply the rate of interest imposed by Capricorn Society on its members for non - payment of monies due on its member's Capricorn Society accounts.

### **Effect of a Member's Non-payment 10(5)**

If any Contribution or other payment due from a Member to the Mutual is not paid and if the Board decides that payment cannot be obtained, the sums required to made good any resulting shortfall or deficiency in the funds of the Mutual shall be deemed to be expenses of the Mutual for the purposes of applying Contributions under Rule 8.

## **RULE 11 RELEASE**

*Terms and conditions of termination of Membership or part thereof.*

### **Liability for Contribution 11(1)**

If a Member's Certificate of Membership has expired and the Member no longer has any Protections the Member may request that the Mutual release the Member from liability for any Additional Contributions. The Mutual may grant the Member's request on the terms and conditions that the Board in its sole discretion deems appropriate.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **No right to Surplus 11(2)**

If a Member is released from any further liability under Rule 11(1), the Member will have no further liability to contribute in any way to the Mutual nor shall the Member have any right to share in any return of Contributions under Rule 23(2) except in accordance with Rule 23(2).

## **RULE 12 RECOVERY OF CONTRIBUTIONS**

*Mutual may in its own name seek recovery of any monies payable by a Member.*

All monies from time to time due and payable by a Member to the Mutual may be recovered by action commenced in the name of the Mutual.

## **PART III SCOPE OF ENTRY**

*Terms and conditions applicable to Entry and Membership.*

## **RULE 13 PROTECTION OFFERED**

In accordance with these Rules, a Member may seek Protection from the Mutual in respect of any or all of the following risks:

### **Business**

- (a) Business Buildings
- (b) Business Contents
- (c) General property
- (d) Theft
- (e) Engineering
- (f) Business Interruption
- (g) General Public and Products Liability
- (h) Money
- (i) Personal Accident and Illness
- (j) Assault
- (k) Goods in Transit
- (l) Motor Vehicles
- (m) Professional Protection
- (n) Tax Audit Expenses
- (o) Legal Expenses

### **Personal**

- (p) Home Building
- (q) Home Contents
- (r) Motor Vehicles

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# RULES OF CAPRICORN MUTUAL LIMITED

## Other

- (a) Such other loss, damage, liability, cost or expense that the Board may determine from time to time;
- (b) Such other loss, damage, liability, cost or expense incidental to the operation of a Motor Trader that the Board, in its absolute discretion, may determine notwithstanding that such risks may be excluded by these Rules or in any Schedule of Protection issued hereunder.

**PROVIDED ALWAYS THAT** in relation to the risks set out above that no loss, damage, liability, cost or expense shall be recoverable unless either they have been incurred with the prior agreement of the Board or the Board shall subsequently determine that such losses, costs and expenses were reasonably incurred.

## PART IV EXCLUSIONS, LIMITATIONS AND WARRANTIES

*Terms and conditions applicable to Protection.*

### RULE 14 RISKS SPECIFICALLY EXCLUDED

There shall be no recovery from the Mutual, except as otherwise provided in this Rule 14, in respect of any loss, damage, liability, cost or expense excluded in Protections set out in the Product Disclosure Statement or in the Schedule of Protection or any endorsement to the Schedule of Protection issued to the Member.

#### Additional exclusions

In addition to the specific exclusions set out in the Protections in the Product Disclosure Statement the following risks are specifically excluded.

##### (a) Other ventures

Activities carried out by a Member other than in the name of the Member.

##### (b) Pre-existing circumstances

Any circumstances not notified to the Mutual before the start of a Protection Year which the Member knew or ought reasonably to have known might give rise to a claim or an entitlement falling within the Protections provided under these Rules and, if issued, any Schedule of Protection.

### RULE 15 LIMITS OF DISCRETIONARY PROTECTION

*Protection can be limited.*

The Protection granted to a Member is limited to the amount stated in the Schedule of Protection issued for that Protection under Rule 6(2). The excess or deductible payable by the Member for a Protection will be the amount stated in any Schedule of Protection issued under Rule 6(3).

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# RULES OF CAPRICORN MUTUAL LIMITED

## PART V CLAIMS

*Terms and conditions applicable to making a claim, payment of a claim and minimising claims.*

### RULE 16 OBLIGATIONS OF THE MEMBER IN RESPECT OF CLAIMS

#### Claims 16(1)

A Member's right to have a claim for Protection considered is subject to the Member notifying of any claim or intention to claim. The Member must give the Mutual prompt notice in writing of any claim made against the Member (including the receipt of notice of intention to make a claim) and notify the Mutual of any losses or potential losses incurred or suffered by the Member, which may fall within the ambit of these Rules.

#### Circumstances 16(2)

Every Member is required to give prompt notice to the Mutual of any circumstances which may reasonably be expected to give rise to a claim under these Rules and shall furnish the Mutual as soon as reasonably practicable with all documents or information relevant thereto. The Mutual may reject any such notice if it appears that the circumstances notified by the Member may not reasonably be expected to give rise to a claim hereunder.

#### Mitigation of Loss 16(3)

When circumstances arise which may give rise to a claim under these Rules, the Member must take reasonable steps at the time to avoid or reduce any loss, damage, liability, cost or expense which the Member may a claim from the Mutual under these Rules. A Member is required to mitigate any actual or potential loss by taking any action that that is reasonably requested of the Member by the Mutual.

#### Information 16(4)

Every Member must at all times promptly notify the Mutual of any information, documents or reports in the Member's or the Member's representative's or the Member's agent's possession or knowledge relevant to any claim or circumstances referred to under Rule 16(1) and Rule 16(2) above. Further, the Member shall, whenever so requested, give the Mutual or its representatives free access to such information, documents or reports with liberty to inspect and copy the same.

### RULE 17 POWERS OF THE MUTUAL RELATING TO THE HANDLING AND SETTLEMENT OF CLAIMS

*Terms and conditions for the claim management by the Mutual.*

The Mutual shall have the right, if it so decides, to control or direct the conduct of any claim or legal or other proceedings relating to any matter which may result in loss, damage, liability, cost or expense in respect of which the Member may be granted Protection under these Rules and any Schedule of Protection issued under Rule 6(3). The Mutual may require the Member to settle, compromise or otherwise dispose of such claim or proceedings in such manner and upon such terms as the Mutual in its discretion sees fit.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **RULE 18 POWERS OF THE BOARD RELATING TO RECOVERIES FROM THE MUTUAL**

*Terms and conditions concerning payment and non-payment of claims.*

### **Meetings 18(1)**

The Board will meet to consider claims for Protection as and when it thinks fit. The Board may at its discretion decide to authorise payment of claims considered by it in accordance with the Rules. The Board may from time to time authorise the Managers to effect payment of claims in the Managers' discretion without prior reference to the Board. In such circumstances the decision of the Manager will be deemed to be the decision of the Board. No director of the Mutual shall sit on the Board while it is considering any claim in which that director is interested.

### **Claims 18(2)(A)**

The Board may authorise a payment from the Mutual's funds to any Member or former Member as whole or part payment of a claim for Protection where the Protection is recorded on the Member's or former Member's Schedule of Protection. The Board may determine the extent or limit of any Protection to be and advise the Member or former Member in writing of its decision without having to provide any reason for its determination. In every case any claim for protection may be granted or withheld by the Board in its absolute discretion.

### **Rejection of Claims 18(2)(B)**

Without prejudice to any other provisions of these Rules, the Board may reject a claim or reduce the sum payable by the Mutual in respect of a claim if:

- (a) In the opinion of the Board the Member making the claim has not taken the steps before, at the time at which, or after the Member had knowledge of the circumstances giving rise to the claim or to protect the Member's interests as the Member should have done or as a Member would have done if it had not been a Member of the Mutual;
- (b) The claim has been settled, or any liability has been admitted, by or on behalf of the Member without the prior consent in writing of the Mutual and there has, in the opinion of the Board been prejudice to it by such action;
- (c) The Member has failed to comply with a recommendation or directive made at any time by the Mutual or the Managers to the Member, in connection with the handling or settlement of the claim or potential claim; or
- (d) The Member has failed to comply with any of the Member's obligations under Rule 16.

### **Interest 18(3)**

In no case shall a Member be entitled to be paid interest on any claim against the Mutual.

## **PART VI CESSATION OF PROTECTION**

*In certain events Member's right to request protection comes to an end.*

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# RULES OF CAPRICORN MUTUAL LIMITED

## **RULE 19 CESSATION OF PROTECTION**

A Member's right to have a claim for Protection considered and granted by the Mutual will cease if any of the following events occur:

- (a) If a Member fails to pay any sum of money demanded of the Member by the Mutual after the Mutual has served the Member with a notice requiring payment of the money by a specified date and the Member fails to pay in full the money on or before the date specified in such notice; or
- (b) If the Period of Protection of the Member shall have ceased in accordance with Rule 7 (Period of Protection); or
- (c) If any of the following events occurs:
  - (i) a resolution passed or an order made for the winding up of the Member other than for purposes of reorganisation;
  - (ii) the Member making any composition or arrangement with the Member's creditors;
  - (iii) the appointment of a receiver, manager or administrator over the assets or undertaking of the Member; or
  - (iv) the dissolution of the Member.

## **RULE 20 EFFECT OF CESSATION OF PROTECTION**

*When Member's right of Protection has come to end this has certain effects.*

### **For failure to Pay 20(1)**

If the Member's right to have a claim for Protection considered has ceased by virtue of Rule 19(a), the Mutual shall not be liable to consider any claim under these Rules made by the Member or any affiliated body of the Member irrespective of whether or not the notification under Rule 16 of the claim or circumstances giving rise to such claim was given before or after the cessation of Protection. The only exception will be when the notification under Rule 16 occurred during a Financial Year that had been closed at the time of the cessation of Protection.

### **For any other Reasons 20(2)**

If the Member's right to have a claim for Protection considered has ceased for any other reason other than by virtue of Rule 19(a) the Board will continue to give consideration to all claims for Protection made by the Member under these Rules if the claim for Protection is made before the date on which the Protection ceases.

## **RULE 21 CONTRIBUTIONS DUE ON CESSATION OF PROTECTION**

*Member's obligation to make contributions when Member's right of protection has come to end.*

### **Contribution on Cessation 21(1)**

Except in the case of a Member released under Rule 11 (Release), a Member whose Membership of the Mutual has ended for any reason will remain liable to pay to the Mutual all Contributions and Additional Contributions for the Financial Year in which the Protection ceases. The Member will remain liable for Contributions and Additional Contributions for any previous Financial Years which have not been closed in accordance with Rule 23 (Closing of Financial Years) at the date the Protection

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# RULES OF CAPRICORN MUTUAL LIMITED

ceases and which, under Rule 9 (Contributions), such Member would have been liable to pay had the Membership not ceased.

**PROVIDED ALWAYS THAT** the Member shall be liable for Contributions for the Financial Year pro rated only for the period beginning with the date of Membership and ending with the happening of the event that caused the cessation of Protection if:

- (a) Such cessation arises by virtue of Rule 19(a), in which case the Member's liability to pay Contributions shall include the sum specified in the notice given under Rule 19(a); or
- (b) Such cessation arises upon the happening of any of the events specified under Rule 19(b) or (c).

## **Set-off 21(2)**

The set-off of any specific sum due to the Mutual under these Rules must be specifically agreed in writing by the Mutual. Otherwise, no set-off of any kind shall be allowed against any sum due under these Rules, including any set-off which might have arisen by reason of bankruptcy or winding up of a Member.

## **RULE 22 REINSTATEMENT OF PROTECTION**

*The Board may decide when Protections may apply to Member after an event set out in Rule 19(a) has taken place.*

If a Member's right to claim for Protection has ceased by virtue of Rule 19(a), then, in the event that the Member offers unconditionally to pay to the Mutual all outstanding amounts together with interest due under Rule 10(4) (Penalty for late payment), the Board may in its absolute discretion reinstate the Member's Protections for such period or periods as the Board may determine.

## **PART VII THE FUNDS OF THE MUTUAL**

*Terms and conditions regarding the funds.*

## **RULE 23 CLOSING OF FINANCIAL YEARS**

### **Closing 23(1)**

The Board will, at such time as it may deem expedient after the end of a Financial Year, declare that the Financial Year shall be closed.

When the Contributions and other receipts are in excess of the claims before the end of the Financial Year the Board may apply these funds in the manner described below:

### **Disposal of Excess funds 23(2)**

If prior to closing any Financial Year it appears to the Board at any time that the Contributions and other receipts (including transfers from reserves and provisions) in respect of the Financial Year shall exceed the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Mutual for that year together with all transfers to reserves and provisions made out of the Contributions paid in respect of such Financial Year, then the excess may at the discretion of the Board be disposed of in whole or in part as follows:

- (a) To establish reserves which in the opinion of the Board are prudent and adequate in the context of the business (actual or anticipated);

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# RULES OF CAPRICORN MUTUAL LIMITED

- (b) By way of a return in whole or in part to the Members who paid such Contributions in proportion to their respective Contributions with a deduction for claims to be determined by the Board. No return shall be made in respect of a Member's Entry which has been subject to release under Rule 11 or where the Protection ceased by reason of the application of Rule 19(a).

When the Contributions and other receipts are in excess of or are falling short of the claims after the end of the Financial Year the Board may act as set out below:

## **Closed Financial Year 23(3)**

If in respect of any Closed Financial Year it shall appear to the Board at any time that the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) falling upon the Mutual for that Financial Year, together with all transfers to reserves and provisions, are not equal to the Contributions and other receipts (including transfers from reserves and provisions) in respect of that Financial Year, then any credit shall be transferred to the general reserve of the Mutual and any deficit shall be treated as an expense of the Mutual and may be made up either by a transfer from the general reserve of the Mutual or by Contributions under Rule 8 (Application of Contributions).

## **RULE 24 INSURANCE ARRANGED ON MEMBERS' BEHALF**

*The Mutual has the power to make arrangements regarding insurances in the manner it deems fit.*

### **Individual Members 24(1)**

The Mutual may insure the whole or any part of the risks arising in respect of Protections provided to individual Members or the membership upon such terms and with such insurers as the Board thinks fit.

## **RULE 25 RESERVES**

*Arrangements regarding funds to be made by Board as it deems fit.*

The Mutual may establish and maintain such reserve funds as the Board may think fit, whether by way of a general reserve or by way of separate reserves for such contingencies or purposes as the Board in its discretion thinks fit.

## **RULE 26 INVESTMENT**

*Terms and conditions for the investment of funds.*

### **Investment Management 26(1)**

The funds of the Mutual may be invested by the Board or Managers or by an investment manager appointed by the Board. The Board may from time to time and at any time lay down such guidelines for the investment of the funds of the Mutual as it shall think fit.

### **Investment Media 26(2)**

Without limiting the Board's overriding discretion, such investments may be made by the purchase of such stocks, shares, bonds, debentures or other securities, currencies, commodities or other real or personal property, or by deposits in such accounts as the Board thinks fit, or by such other method, whether producing income or not, as the Board thinks fit.

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# RULES OF CAPRICORN MUTUAL LIMITED

## **Pooling of Funds 26(3)**

Unless the Board otherwise decides the funds standing to the credit of all Financial Years, and of any reserves or accounts, shall be pooled and invested as one fund.

## **Gains and Losses 26(4)**

When funds are so pooled any dividends, interest or accruals of interest and any other realised investment gains or losses, arising on the pooled funds, shall be credited or debited, as the case may be, to the Financial Year in which such gains or losses arise.

(a) Any such gains may be used to meet:

- (i) the claims, expenses, losses and other outgoings (whether incurred, accrued or anticipated) which in the opinion of the Board necessarily and properly fall on the Mutual in respect of the Financial Year;
- (ii) such transfers to reserves or provisions as the Board may deem expedient to make, including transfers to reserves and provisions in respect of any deficiency which has occurred or which may be likely to occur in respect of any Closed Financial year, as it thinks fit.

(b) Any such losses shall be treated as expenses of the Mutual and may be made up either by a transfer from the reserves of the Mutual or by Contribution under Rule 8 (Application of Contributions).

## **PART VIII GENERAL TERMS AND CONDITIONS**

### **RULE 27 DELAY OF RIGHTS AND WAIVER**

*The Mutual does not give up any of its rights, power or interests whatsoever under these Rules unless expressly stated.*

#### **No admission 27(1)**

No act, omission, delay or conduct of the Mutual of any type and when ever it, whether by or through its officers, servants, managers, agents or otherwise, will constitute any admission or promise that the Mutual will give up any of its rights under these Rules.

#### **Waiver by Mutual 27(2)**

In spite of any neglect or non-compliance with, or breach of, any of these Rules by a Member, the Board may in its sole discretion waive any of the Mutual's rights arising from the Member's conduct and may pass and pay in full or in part any claim which it thinks fit. The Board shall nevertheless at all times and without notice be entitled to insist on the strict application of these Rules.

### **RULE 28 ASSIGNMENT AND SUBROGATION**

*The assignment of any and all rights, powers, interests, obligations of whatsoever nature is only allowed with the consent of the Mutual.*

#### **Assignment 28(1)**

No obligation of the Mutual, and no interest under these Rules or under any contract between the Mutual and any Member, may be assigned without the prior written consent of the Mutual. The Mutual has the right in its discretion to give or refuse such consent without stating any reason or to give its consent on any such terms or conditions as it may think fit.

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# RULES OF CAPRICORN MUTUAL LIMITED

If a payment is made from the funds all rights of recourse or powers and interest in relation to these payments is subrogated, assigned or otherwise transferred to the Mutual authorising the Mutual to use the Member's name subject to the terms and conditions below:

## **Subrogation 28(2)**

Whenever a payment from the funds of the Mutual has been authorised by the Board under these Rules, the Member agrees to subrogate, assign or otherwise transfer any and all of its rights of recourse against third parties to the Mutual. The Member authorises the Mutual to use the Member's name in any proceedings relating to the payment.

**PROVIDED ALWAYS THAT** the Mutual shall not exercise any rights of subrogation against any employees of a Member, or require the assignment or transfer of any rights which the Member may have against employees of the Member. This proviso will not apply in cases where there is an allegation of a dishonest, fraudulent, criminal or malicious act or omission by the employee. The term "employee" shall include ex-employees and any person acting or who has acted as an employee of or consultant to the Member without a contract of service or employment.

## **RULE 29 DELEGATION OF POWERS**

*The Mutual may delegate its powers.*

### **By the Mutual 29(1)**

Whenever any power, duty or discretion is stated in these Rules to be vested in the Mutual, such power, duty or discretion will be exercisable by the Board unless it has been delegated to any committee or sub-committee of the Board of Directors or to the Managers. If this occurs then the power, duty or discretion may be exercised by any person to whom it has been delegated.

*The Manager may delegate its powers.*

### **By the Managers 29(2)**

Whenever any power, duty or discretion is conferred or imposed upon the Managers by virtue of these Rules, such power, duty or discretion may, subject to any terms, conditions or restrictions contained in these Rules, be exercised by any one or more of the Managers or by any employee of the Managers to whom the same has been delegated.

*Delegated powers are exercised on behalf of the Mutual.*

### **On behalf of the Mutual 29(3)**

Whenever the Board, the Managers or any other person to whom it has been delegated exercises any power, duty or discretion, such power, duty or discretion shall be exercised on behalf of the Mutual.

## **RULE 30 DISPUTES AND DIFFERENCES**

*Any disputes arising shall be solely dealt with initially by the Board on written submission and subsequently through mediation and finally by arbitration as set out below.*

### **Adjudication 30(1)**

If any difference or dispute between any person and the Mutual relating to any loss, claim or demand made by that person shall arise out of or in connection with these Rules or a Schedule of Protection, such difference or dispute shall in the first instance be referred to and adjudicated by the Board. This

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# RULES OF CAPRICORN MUTUAL LIMITED

will take place even if the Board has already considered the matter before any such difference or dispute arose. An application to have the Board adjudicate a matter must be in writing. The Board will deliver its decision in writing.

## **Dispute Resolution 30(2)**

Subject to Rule 30(1), a dispute or difference between a Member and the Mutual may at the Member's discretion be referred to the Financial Industry Complaints Service Limited whose decision will be binding on the Mutual.

## **Sole remedy 30(3)**

No Member is entitled to maintain any action, suit or other legal proceedings against the Mutual unless in accordance with the procedures laid down in this Rule 30. In the case of a difference or a dispute, the Mutual's only obligation to a Member under these Rules and any Schedule of Protection issued will be to pay such sum as may be directed by such an award.

## **RULE 31 NOTICES**

*Terms and conditions regarding the giving and serving of notices.*

### **To the Mutual 31(1)**

A notice required under these Rules to be served on the Mutual may be served by sending it through the post in a pre-paid letter or by sending it by facsimile transmission addressed to the Mutual at the Mutual's registered office for the time being.

### **To a Member 31(2)**

A notice required or permitted under these Rules to be served on a Member or on a Member's Representative may be served by sending it through the post in a pre-paid letter or by sending it by facsimile transmission addressed to such Member or Member's Representative at the address appearing in the Certificate of Membership or the Schedule of Protection or failing that to the last address held in the register of Members.

### **Date of service 31(3)**

Any notice or other document if served by post shall be deemed to have been served on the second day following the day on which the letter containing the same was put in the post. In proving such service it will be sufficient to prove that the letter containing the notice was properly addressed and put into the post in a pre-paid envelope. Any notice or other document served by facsimile transmission shall be deemed to have been served on the day it was despatched. In proving such service it shall be sufficient to prove that such facsimile transmission was duly despatched.

## **RULE 32 GOVERNING LAW**

*Australian law is applicable to the Rules and the relationship between the Mutual and the Member.*

The Rules and any other relationship between the Mutual and a Member shall be governed by and construed in accordance with the laws of Australia.







**Australia: 1800 007 022**  
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