Raising New Capital in Mutuals
- Taking action in the UK

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Foreword by: Rt. Hon. Lord Naseby PC

mutuo

What is a mutual?

A mutual is a business owned by its customers or its employees, or a combination of the two.

Mutuals have been around in the UK for more than 200 years. They were established in response to the failure of the market to provide the goods or services that people needed.

Mutuals are self-help organisations, and exist to serve the interests of their members, and often the wider community. Mutuals take many forms and operate in a wide range of business and social environments. Most people recognise mutuals through one or more of the long established building societies, co-operatives, friendly societies and mutual insurers. But the sector encompasses many more types of organisations – from housing associations, clubs and employee owned businesses to specialist bodies such as credit unions, football supporter trusts and community mutuals.

In recent years, many new mutuals have sprung from the public sector – new independent organisations providing public services, such as NHS Foundation Trusts, Leisure Trusts, Co-operative schools and community mutual housing schemes.

Mutuals are not just different types of corporate form – they are different because of the way they behave, and the reason they do business.

What all of these membership based organisations share is a common heritage and ethos – to serve their members and work in the wider interests of society.

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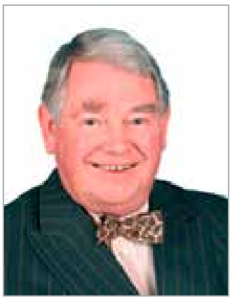
Contents



Foreword

People will be closely acquainted with the difficulties that many mutuals, particularly in the financial services industry, have faced in raising new capital whilst maintaining their mutual status.

In my estimation there are three basic barriers to resolving this problem. Firstly the law needs to be changed to permit mutuals to issue new shares; secondly, these shares need to be designed to the satisfaction of regulators and thirdly, investors must find these shares attractive.

The Mutuals' Redeemable Shares Bill addresses the first of these and makes consideration of the other two possible. My Private Members' Bill is an important and urgent piece of short legislation that aims to open up new opportunities for solving this conundrum.

My Bill was read for a first time in the Lords on July 22, 2013. The legislation has the support of leading mutuals but now requires the support of Her Majesty's Government to make progress.

Rt.Hon. Lord Naseby PC

Executive Summary

The capital conundrum

By their very nature, mutuals are limited in how they can raise capital. Like all businesses, they can retain profits and can borrow against future earnings, but they have no equity shareholders and so do not have access to this type of prime capital.

However, mutuals were not designed with capital investors in mind. They exist to serve their members who will be customers, employees or defined communities. Where members have contributed capital to their mutual enterprise, it is not to speculate for capital gain but to fuel the business.

Large mutuals are thus created patiently, and over a long time – requiring sustained periods of business success to grow. The lack of external capital is sometimes cited as a strength in the process of building patient, risk averse mutual businesses, which can concentrate on the job in hand, rather than the short term needs of capital investors. However, it can also limit their flexibility in adapting to new market conditions, and their ability both to secure maximum investment in the business and to grow through acquisition.

These restrictions are well known and mean that the debate around capital in mutuals is not new. To date however, in the UK at least, mutuals have not made significant alterations to their basic capital framework, which was designed more than 150 years ago. The reason for this is that mutuals have been wary of introducing external capital into their business for fear that it could subvert the purpose of the firm and could lead ultimately to demutualisation in extreme cases.

The challenge therefore is to amend the capital regime in mutuals to permit the injection of external capital, whilst safeguarding both the core purpose and mutual integrity of the business. We can point to existing examples where this has been achieved in other countries such as Canada, France and The Netherlands. We believe that similar provisions should also exist in the UK.

"The challenge therefore is to amend the capital regime in mutuals to permit the injection of external capital, whilst safeguarding both the core purpose and mutual integrity of the business"

The Mutuals' Redeemable Shares Bill

The Mutuals' Redeemable Shares Bill seeks to make the necessary legislative changes to permit UK mutuals to access additional capital whilst safeguarding their mutual purpose and status. This legislation will facilitate growth in the mutual sector and increase competition with proprietary businesses, which will not only benefit consumers and investors but will also enhance the strength and resilience of the market for financial services in the UK.

New shares would be created which provide an option for investors seeking to diversify their investment portfolio.

The shares will commonly not be transferable but rather redeemable by the issuing mutual. Mutuals may in due course construct internal trading schemes for some types of shares to promote greater liquidity.

The Mutuals' Redeemable Shares Bill would create a legal framework for these shares to be issued. The Bill will also provide powers to make regulations to deal with the detailed implementation of such schemes. Such powers would be exercised under

the affirmative resolution procedure of both Houses of Parliament.

In summary, the Bill will:

- Create an optional new and additional class of redeemable share through which specified mutuals can raise additional funds.
- Provide consequential rights to specified mutual society members.
- Restrict the voting rights of certain members who hold only redeemable shares, so that they cannot participate in any decisions to transfer, merge or dissolve the mutual.

Mutuo has produced this draft Bill with the assistance of leading co-operative and friendly society/mutual insurer lawyers, Ian Snaith of DWF LLP and John Gilbert of Hogan Lovells International LLP.

On 22 July 2013, Rt Hon Lord Naseby presented the Bill in the House of Lords as the first stage in its Parliamentary journey. Mutuo is supporting this initiative and is assembling a coalition of supportive businesses to help take this forward.

This is a complex undertaking, requiring skilled Parliamentary and legal expertise in order to build a cross party consensus in support of this new law in both Houses of Parliament, with HM Treasury and with regulators.

We hope that all mutuals will feel able to support this exciting initiative, and wish to play an active part in charting the future of the mutual sector.

"On 22 July 2013, Rt Hon Lord Naseby presented the Bill in the House of Lords as the first stage in its Parliamentary journey. Mutuo is supporting this initiative and is assembling a coalition of supportive businesses to help take this forward."

How new share capital could be put to work

- *Friendly Societies and Mutual Insurers – Funds to develop new retail investment products and growth through acquisition*
- *Housing Associations – New investment in social housing to increase stock and improve quality*
- *Co-operatives – Strengthened businesses that can enter new markets and invest in growing successful brands*

1

Introduction - The politics of changing the law for mutual businesses

Much of the law affecting co-operatives and friendly societies stems from their beginnings in the mid-nineteenth century, with only occasional changes being made over the last 150 years. As a result, mutual law has always struggled to keep pace with the constantly evolving legislation governing shareholder owned companies.

Up until 2000, many politicians and policy makers had lost interest in a sector that had been transformed by demutualisation and was consequently much smaller than it had been. As a result, policy makers gave little time to considering the needs of mutual businesses and updating their legislative framework.

Yet the past 10 years has seen the emergence of a growing consensus across the political parties that mutuals have more to offer society and could help to provide solutions to the delivery of community ownership and public services.

The last Labour Government started this development by lending its support to the development of football supporters trusts in 1999. New mutual NHS Foundation Trust Hospitals were then formed in 2003, followed later by co-operative schools.

Over the same period, cross-party support was achieved for a series of Private Members Bills which introduced modest but nevertheless important changes to mutual sector legislation.

"We will bring forward detailed proposals to foster diversity in financial services, to promote mutuals..."

In 2008, the Global Financial Crisis radically changed the terms of the debate. When the crash came, the demutualised banks were incapable of maintaining their position and needed state support, in stark contrast to the remaining mutual building societies, which weathered the crisis unscathed.

A new awareness emerged of the importance of spreading risk to economies by ensuring the presence of a plurality of diverse business types. The political wind moved in favour of mutuals as the consequences of the rush to demutualise in the 1980s and 1990s was better understood. A new engagement in both the issues facing long established mutuals and the opportunities for new mutuals was evident.

"The first step is to establish new shares clearly in law. Primary legislation will establish the framework for such shares, and regulations will ensure that their use fits logically into UK markets."

In the run up to the 2010 General Election, all three of the major political parties made considerable reference to mutuals and their importance was underlined by the Coalition Agreement, which in May 2010 promised:

"We want the banking system to serve business, not the other way round. We will bring forward detailed proposals to foster diversity in financial services, to promote mutuals and to create a more competitive banking industry."[1]

Consequently, the Government has shown a renewed interest in mutuals. Cabinet Office and BIS initiatives have promoted mutual spin-outs from the public sector. Over the past three years the Coalition Government has gone on to promote new employee-owned mutuals in public services and has also introduced legislation to mutualise the post office.

The initiatives of the last few years have so far led to over 2 million people joining new mutuals.

The Ownership Commission, which examined corporate ownership for two years up to March 2012, identified in its recommendations that new capital instruments were required for mutuals to allow them to raise external capital; otherwise their growth prospects would be hampered.

1 The Coalition: Our Programme for Government, Page 9

It is our contention that new shares are required for mutuals that can be offered to individuals and institutions. They must be attractive to purchasers, but they must not dilute the mutual purpose of the firms offering them. Access to capital is a conundrum that has been discussed for many years in the mutual sector. It is now time to take action.

The first step is to establish new shares clearly in law. Primary legislation will establish the framework for such shares, and regulations will ensure that their use fits logically into UK markets.

The Mutuals' Redeemable Shares Bill is not the last word in what we see as a process to develop a range of usable instruments for UK mutuals to raise capital, but it is an important first step in establishing these new capital raising opportunities.

The Bill was introduced in the House of Lords in July 2013 and, as with any Private Members Bill, will need cross-party support and Government time to give it the opportunity to become law. This small piece of legislation could prove a turning point for the mutual sector and a significant Parliamentary campaign will be undertaken to support it.

2

Mutuals Today

The story of the customer owned mutual sector is entwined with the history of UK corporations. The creation of the joint-stock company was paralleled by the establishment of specific legal forms to permit the registration of corporations that would exist to serve their owner members, rather than stock-holders. Mutuals were established in a deliberate effort to provide an alternative business form.

From 1850 to 1900, customer mutuals rapidly came to dominate food retail, mortgage lending and the personal insurance business. For many years, these mutuals would continue to grow. So successful would they be, that the simple idea of running a business in order to serve its customers would be adopted around the world.

Since the Second World War, UK mutuals have been eclipsed in size and influence by the public limited company. As local bonds have become less important, larger, capital driven corporations have come to dominate the market place. Hampered by their lack of access to capital, their desire to remain rooted in their founders' communities, and the ever-present threat of demutualisation, many co-operatives have become less significant. For friendly societies the biggest factor in the decline was the introduction of the Welfare State which deprived them of their role in administering the embryonic system of national insurance which had previously been in place. Their response has been to consolidate amongst their number, halting decline, but they are in need of new opportunities. [2]

Mutuals continue to offer an alternative way of doing business that is particularly well suited to a more socially driven and transparent business world. New technologies offer greater accessibility to mutual structures, as members are able to interact more easily with their businesses.

2 Funding the Future: An alternative to capitalism, C Mills, Mutuo

'As serious questions are raised about the market and capital driven economy, mutuals should be experiencing a new lease of life. This requires a re-embracing of the values that made the sector great. It also requires an overhaul of centuries old rules on capital and legislation governing the sector. By taking action now, we can deliver a new mutualism for the next 100 years.'[3]

The Purpose of Mutuals

To qualify to incorporate as a customer owned mutual, the founders must satisfy the relevant regulatory body[4] that their purpose is to trade for the benefit of their members.

All mutuals are established for a shared member purpose, but generally access to their goods or services is open to anyone, as is membership. They are all owned by their members; this ownership is expressed commonly – no individual can take away their 'share' of the assets, unless the mutual bond is broken through demutualisation.

"All mutuals operate some form of democratic voting system, with each member valued the same - one member one vote"

All mutuals operate some form of democratic voting system, with each member valued the same - one member one vote. This contrasts with shareholder owned companies where votes are distributed according to capital ownership. Mutuals adopt forms of representative governance, but these vary between types. For example in a mutual insurer or friendly society, though members elect the Board, the candidates are often (although not always) nominated by the existing Board and in a consumer co-operative, Board members are

3 The Ownership Commission 2012
4 The Financial Conduct Authority is responsible for ensuring that registrations of co-operatives, building societies and friendly societies are appropriate and, for those societies which provide financial services, also regulates how they treat customers fairly . The Prudential Regulation Authority deals with issues specific to the financial stability of any societies that operate in deposit-taking or insurance.

"Mutuals in the UK today make up around 5% of economic activity and provide 3.5% of total employment"

usually elected directly from the customer membership.

All mutuals share these features, to a greater or lesser degree, depending on the sector they operate in, their individual circumstances and the distinct purpose of the organisation.

Mutuals in the UK today make up around 5% of economic activity and provide 3.5% of total employment.[5] In particular markets, mutuals are more significant. Mutuals account for approximately 8% of food retail trade,[6] and in the financial services industry, building societies account for 20% of mortgage balances and deposits, financial mutuals hold 36% of cash ISA balances.[7]

5 Mutuals Yearbook 2012, Mutuo
6 Retail Industry Statistics
7 Building Societies Association

3

Capital in mutuals

Mutuals must generate capital for growth internally, they have no shares to sell and hence no access to equity markets. Ongoing capital in co-operatives consists of retained earnings and bank borrowings,[8] with some smaller co-ops also raising withdrawable share capital.

The lack of access to reliable capital can be a serious limiting factor on the growth and development of customer mutuals. The way these businesses are constructed means that the introduction of external capital without additional safeguards such as limits on voting rights and distributions, would water down the mutual purpose of the organisation.

The ICA Blueprint for a Co-operative Decade summarises the challenge:

'Co-operative capital needs to offer 'a financial proposition which provides a return, but without destroying co-operative identity; and which enables people to access their funds when they need them. It also means exploring wider options for access to capital outside traditional membership, but without compromising on member control'. [9]

The consolidation of business in the financial services and retail sectors, the two business areas with most consumer mutual impact, has led to an inexorable squeeze on the sector. Consolidation between mutual businesses has been the short term response to this pressure and has created a small number of firms of critical size, better able to compete in their markets. But organic growth has remained a difficult challenge without access to new capital. In staying true to their business purpose, customer mutuals are therefore limited by their options to access capital for growth.

Legal limitations prevent many mutuals from raising significant capital sums from their members. Either the nature of the mutual (such as a friendly society) mitigates against the ability of the society to raise capital from members or specific limits on returns in co-operatives make such practices difficult.

Some external capital instruments do exist in mutuals. Though outside the scope of this Bill, in building societies, over £2bn of deferred shares have been issued in the form of Permanent Interest Bearing Shares (PIBS) primarily by the largest societies.[10] Unlike some of their counterparts in Europe, UK building societies have principally (although not exclusively) targeted such capital issuance at wholesale investors rather than members. Investors in instruments such as PIBS have limited voting capacity under the 'one member one vote' principle, in contrast to shareholders in a plc.

Nationwide Building Society has indicated its intention to issue Core Capital Deferred Shares (CCDS). This new capital instrument is designed for mutual building societies and will enable Nationwide to raise common equity tier one capital to supplement retained earnings and to diversify its capital base.

"The lack of access to reliable capital can be a serious limiting factor on the growth and development of customer mutuals."

8 For example, in 2008 the Co-operative Group bought the Somerfield chain of supermarkets for £1.57 billion, and raised much of the capital for this acquisition from bank lending, which is being repaid from retained earnings.
9 The Capital Finance of Co-operative and Community Benefit Societies

10 Source: KPMG Building Societies Database 2009

3.1

Friendly Societies, Mutual Insurers, Co-operatives and Housing Associations

Friendly Societies and Mutual Insurers

Friendly Societies and mutual insurers can trace their origins back at least to the 1700s, when mutual insurance began to provide security for large numbers of working people. Like other customer mutuals, the capital accumulated in these firms has been built up steadily and organically from retained earnings. This sector has been particularly affected by demutualisation and consolidation, with many life firms merging and others seeking stock market listings.

Friendly societies and mutual insurers do not currently have even withdrawable share capital in the same way as co-operatives, so there is a significant legislative difference.

In the past, mutual insurers have tended to be quite well capitalised, although there have been exceptions: the principal reason given for the demutualisation of Standard Life in 2006 was to raise additional capital via the stock market. Demutualisation is an expensive process and destroys the control that a mutual's customers exercise over the ownership and direction of the business – the key characteristic of the mutual business model. Diversity in the UK financial services market would be greatly eroded if mutuals continued to be forced to demutualise whenever they needed to raise additional capital. Moreover, the need for mutual insurers to raise more capital is likely to increase in the future as Solvency II places additional demands on societies and as capital is returned to policyholders as policies mature.

Additionally, many mutual insurers carry on with-profits business and have been treated by the regulators as if the whole of their capital formed a with-profits fund subject to strict regulation. There are severe constraints on how assets in a with-profits fund can be used which means capital is only available to expand the business of the mutual in very restrictive circumstances. This contasts starkly with PLCs, which have separate shareholder capital.

In December 2012, the FSA issued a consultation paper on a process by which mutual insurers might split their with-profits funds so as to recognise "mutual capital" which could be used for more general corporate purposes, including developing new lines of business for the benefit of both existing and new customers. A policy statement is expected from the Financial Conduct Authority later this year,[11] but the indications from the consultation are that, at best, the process for recognising mutual capital will be complex and the amount available to different mutual insurers is likely to vary greatly. Redeemable shares issued by societies under the Bill might allow mutual insurers to supplement their mutual capital or may even provide them with a method of establishing mutual capital without going through the complex and expensive process envisaged in the FSA consultation.

Although the idea of mutual insurers issuing shared capital might seem anomalous, there are precedents:

Many friendly societies provide a "Holloway" contract, which is a hybrid savings and permanent health product. The Holloway contract provides for health insurance up to a specified retirement age with a lump sum becoming payable on attainment of that age. Most Holloway societies also allow members who have reached the retirement age keep the lump sum invested with the society even though they are no longer entitled to insurance benefits.

Friendly societies have also long been able to accept over-payment from their members

11 This refers to what is known in the industry as 'Project Chrysalis'

of regular contributions to the society, which accumulate in an excess contributions account where they attract interest.

Both these mechanisms are similar to the concept of members (or former members) contributing to the capital of the society through shares, although they are not expressed in those terms.

In other countries, mutuals can expand their capital bases by raising capital in ways that will not dilute their cooperative ownership, values, and governance structure, this is documented later.

Co-operative Capital

The mechanisms for funding co-operatives are more restricted than those for companies. It is not possible for co-operatives to have equity share capital, as understood in the company law context, because equity ownership is incompatible with the co-operative principles and would therefore be prima facie unregistrable; and it is not possible for societies for the benefit of the community because distributions of income and capital are not permitted.[12]

Co-operative societies, like building societies, were historically funded by their member-customers, who were required to subscribe a minimum amount of share capital in order to be afforded full membership rights. This might be built up over a period of time, including by leaving undrawn dividends. Subject to the minimum capital requirements therefore, members were permitted to withdraw funds from their account and share capital was typically withdrawable.

One of the consequences of this was that members' share capital remained static in value. Although it was risk capital, in the sense that it could be lost on insolvency in paying debts owed to creditors, it did not give members an undivided share in the value of the underlying business.

"Co-operative societies, like building societies, were historically funded by their member-customers..."

Whilst the co-operative carried on trading, members therefore had no expectation of any entitlement to more than repayment of their original capital. Their real interest was in the continuity of the existence of their society, providing goods and services to meet their needs.

As a direct result of this approach to funding and ownership, any undistributed surplus was retained as reserves and shown as such in the accounts, and although such reserves constituted members' funds for accounting purposes, whilst the society remained a going concern, they did not "belong" in a traditional ownership sense to the members. They were more like assets currently held by the body of members, almost as trustees for the purposes of the society.[13]

An appropriate and sustainable basis of funding is a prerequisite for any business if it is to start up and survive, and the requirements for funding are likely to change or evolve over the life of the business. The restrictions in relation to funding of co-operatives which are created by legislation[14] are therefore fundamental to the future use of the co-operative form, and to the future viability of co-operatives.

One such provision of co-operative law affecting funding is a £20,000 limit on any member's interest in the withdrawable share capital of a co-operative. There are particular situations where this limit causes problems for co-operatives, which are thereby prevented from having access to funds from members in order to invest for the future.[15] It is imperative that this artificial limit is raised.

12 The Funding of Industrial & Provident Societies, Mills C, Snaith I: Cobbetts

13 Mills ibid

14 The Co-operative and Community Benefit Societies Acts

15 For instance as in agricultural co-operatives but this is also true of the sector more widely

The Government is currently proposing to implement a number of key reforms of IPS legislation. The first of these is the Co-operatives and Community Societies Consolidation Bill, which was announced in January 2012. The Consolidation Bill, which was welcomed by the sector, will be an important step in reducing legal complexity for new and existing societies. The Government is currently consulting on this and other important changes.[16]

The use of Community Shares (withdrawable shares in co-operatives and community benefit societies) has been promoted as a useful way of raising funds for small community based co-operative organisations. It is clear that larger co-operatives and mutuals require a different solution.

As Hayes noted,

> 'It is worth reflecting that the problem of capital finance is often a major reason for the incorporation of worker and agricultural co-operatives as companies, so that a solution within the society framework might help unify the UK movement around a single corporate form with a firm foundation in co-operative principles. Similarly, these considerations apply equally to co-operatives and community benefit societies, which share in common their character as democratic associations and an adherence to co-operative principles, despite the loss of autonomy created by state involvement in the housing sector, again partly a consequence of the problem of capital finance.'[17]

"An appropriate and sustainable basis of funding is a prerequisite for any business if it is to start up and survive"

He continued,

> 'Since 1990, smaller societies have issued shares to user-members as risk capital in withdrawable form and in May 2012 the Co-operative Group amended its rules to permit the issue to its users (i.e. consumers) of transferable shares. In the case of the Group, there may have been a need to change the culture and break with the tradition of treating withdrawable share capital as a deposit; the use of transferable, non-withdrawable, shares creates a new understanding with members.'

Hayes cites Pigou's recognition that external subscribers of risk capital will expect to have a say, directly or indirectly, in how their money is used:

> 'The separation of ownership and control in large enterprises does not alter the normal tendency of management to pursue the interests of investors, particularly in a culture as financialised as the UK's. Furthermore most of the return on investment in a company arises from capital gain, arising partly from the accumulation of undistributed profits but more importantly from the opportunity to capitalise future profits by the sale of the business as a whole, without serious reference to the interests of the human community which it embodies and serves, notwithstanding section 172 of the Companies Act 2006.'[18]

One should also consider whether a mutual's business strategy is offensive or defensive, which might determine its approach to capital raising. As Cook et al have remarked in relation to American Credit Unions:

> 'Defense (sic) is typically the reason the coop is initially formed. Credit unions, for example, were formed to defend members from the exclusionary practices of the banking industry. There was market failure. Most collective action at its inception is designed to protect the wealth of the member, to prevent members from being abused in the marketplace. It is

16 https://www.gov.uk/government/consultations/industrial-and-provident-societies-growth-through-co-operation/industrial-and-provident-societies-growth-through-co-operation

17 The Capital Finance of Co-operative and Community Benefit Societies, Co-operatives UK

18 The Capital Finance of Co-operative and Community Benefit Societies, Co-operatives UK

to protect the wealth of the member from opportunistic behaviour of outsiders.

Offensive market posture was not typical in mutuals, which were formed to defend their members and to prevent others from taking advantage. But today we are seeing mutuals go on the offense, to add to the wealth of the member. Not just to protect member wealth, but to add to it. That is, in many mutuals members are as interested in the return on their investment in the mutual as they are in utilizing the services of the mutual. However, traditional mutuals don't generate enough capital growth to sustain an offensive approach.'[19]

In the UK, as mutual business has grown, the same can be said about them. They increasingly need to grow their market share in order to compete with their PLC counterparts, and in order to do so, they need access to capital.

Social housing providers registered as mutuals

Housing associations are the leading suppliers of affordable homes in the UK, and major partners in social housing regeneration and estate renewal. They provide a wide range of welfare services to communities. The majority of housing associations are Industrial and Provident Societies, so they share a corporate form with many types of co-operative and community benefit societies.

Housing Associations are funded through a rapidly decreasing public subsidy, their own business receipts and borrowings. The drop in lending due to the credit squeeze and the sharp reduction in private new-build have increased the pressure on housing associations to maintain the flow of affordable homes in all areas of the country.

"Housing associations are the leading suppliers of affordable homes in the UK, and major partners in social housing regeneration and estate renewal."

Housing associations have recently begun to seek debt funding from capital markets, raising almost £4bn during 2012 in a move that highlights the pressure on government-funded organisations to establish alternative lines of credit.

According to a recent report from the Communities and Local Government Select Committee[20]

> 'A basket of measures, covering all tenures of housing, is needed if enough finance is to be made available to tackle the country's housing crisis. There is no one 'silver bullet' with which the housing deficit can be removed. Many of the measures in the Government's housing strategy will provide a welcome boost in the short to medium term. However, further action and a longer term approach will be needed if we are to see a sustainable change in housing supply. The country has not come close to delivering the number of homes it needs for many years, and this has been exacerbated by the recent financial crisis.
>
> Institutions and structures that have traditionally ignored housing should be encouraged to invest. Increased investment from large financial institutions and pension funds may not be a panacea, but could make a significant contribution to the building of new homes in both the private and social rented sectors. Public sector bodies and housing associations should take steps to encourage institutional investment.'

19 Managing Credit Union Capital: Subordinated Debt, Uninsured Deposits, and Other Secondary Sources, A Colloquium at the McIntire School of Commerce University of Virginia, Cook et al, USA, 2004

20 Parliamentary CLG Committee - Financing of new housing supply 23 April 2012

Why access to new capital matters

There are a number of reasons why action needs to be taken to permit mutuals to access new capital.

Firstly, mutuals need to be able to play a full part in an economy with diverse corporate ownership.

> 'The ownership framework in which economic activity takes place is one of the central institutions of the modern market economy… Plurality of forms of ownership provides more opportunity to align the form of ownership with the appropriate business model, promotes more resilience to shocks within particular sectors and the wider economy, allows investors and savers more avenues in which to save and invest and gives consumers more choice.'[21]

The experience of the Global Financial Crisis radically changed the terms of the debate around corporate ownership. In the financial services industry, the failure of plc owned banks caused great damage to the UK economy, requiring taxpayer intervention, in sharp contrast to the experience of the remaining mutuals, which did not require a bail out.

Among policy makers, a new awareness has emerged of the importance of spreading risk to economies by ensuring the presence of a plurality of business types.

A vibrant economy requires businesses of all types to be able to compete, regardless of corporate form. This means that appropriate legislative frameworks are required that do not restrict particular types of firm from being able to access the finance capital that they need to facilitate their growth and development.

Secondly, without new capital many mutuals could be driven into inappropriate corporate forms through demutualisation.

21 Ownership Commission, Mutuo 2012

Mutuals needing more capital than they can raise through retained earnings may be tempted to convert to PLCs and indeed we have seen this happen throughout the history of the co-operative and mutual sector. If there were more widespread conversions of mutuals to other corporate forms, consumer choice would be reduced. Large numbers of consumers would no longer have non-listed, member-owned options in the financial services marketplace.

As has been argued in the United States:

> 'Investor-owned financial services firms have seemingly unlimited options and access to capital. This puts U.S. credit unions at a potential disadvantage because they operate in an environment where financial services consumers are demanding more delivery channels, higher levels of service, and more product choices.'[22]

Thirdly, a lack of capital limits mutuals' growth and the ability to develop new services.

The growth rate of a mutual is constrained by its relative inability to add capital through retained earnings. An inability to add capital indirectly adversely affects a financial mutual's expense ratio by making it more difficult to achieve economies associated with a larger scale of operations.

This further limits mutuals' ability to offer consumers choice and competition in the market place.

Fourthly, like all businesses, mutuals need to be able to benefit from the economies of scale only available by growing their business.

Mutuals need to gather sufficient capital to serve their members well, extend services to new members, expand their menu of services, and achieve economies of scale.

22 Alternative Capital for US Credit Unions? A review and Extension of Evidence Regarding Public Policy Reform, Robert F. Hoel, Colorado State University

3.2

Maintaining the integrity of mutual ownership

We recognise that by introducing a new investor share into mutuals, it is also important to install legally enforceable safeguards for those mutuals, to ensure that their core purpose of business is not perverted by a new class of shareholder, or that they risk demutualisation. Such provisions already exist in other legal jurisdictions, where similar shares are already in use.

European Co-operative Law

The Statute for a European Co-operative Society[23] established common principles for the basis of registering co-operatives that will trade in more than one EU state. These principles are important as they draw upon the predominant themes for defining and regulating co-operatives across the EU.

"The Mutuals' Redeemable Shares Bill seeks to establish similar statutory protections in a way that is consistent with the UK legal context in which mutuals operate."

The first big difference between the legislative frameworks prevalent in most EU states and the UK, is a significant issue of principle; the principle of 'disinterested distribution' exists as the norm among mutuals. This acts as a legal barrier to demutualisation by removing the incentive for current members to cash-out the value of the business. In effect, on a solvent winding up, assets and reserves in a mutual entity may only be transferred to another such body pursuing similar aims or to other general interest purposes. The assets cannot be transferred to a different corporate body such as a plc or private company and cannot be distributed among the current generation of members as a windfall gain, as has happened in UK demutualisations.

This type of provision is commonly applicable to co-operatives across many EU jurisdictions, but not available to UK registered co-operatives or mutuals. As a consequence, mutuals and co-operatives have constructed sometimes elaborate defences against demutualisation. Demutualisations that have occurred in the UK have led to current members cashing out the value of the organisation (or a proportion of its value) against its intended purpose.[24]

As has been noted above, demutualisations, particularly in the financial services industry have had overwhelmingly negative effects on competition, choice and value. Such events have been avoided in other EU countries by the consistent application of the principle of disinterested distribution.

The Mutuals' Redeemable Shares Bill seeks to establish similar statutory protections in a way that is consistent with the UK legal context in which mutuals operate. In essence, this is about removing both the incentive and the opportunity for individual holders of these new shares to seek to access the legacy assets of the mutual through demutualisation. Under the terms of the Bill, such new members will not be able to vote on big decisions such as transfers, mergers or dissolution. Equally, their financial interest in the mutual will be limited to the shares that they own, and they will only receive one vote, regardless of the number of shares held.

These will be the first ever legal protections against demutualisation for such mutuals in UK law.

23 http://europa.eu/legislation_summaries/employment_and_social_policy/social_dialogue/l26018_en.htm

24 Windfalls or Shortfalls? – The true cost of demutualisation – All Party Parliamentary Group for Building Societies and Financial Mutuals, March 2006

3.3

Some international examples of mutual capital

Although facing the same natural limitations on raising capital as UK mutuals, mutuals across the world raise additional capital in a variety of different ways. Some types of capital raised in Europe exhibit equity-like features and are available to institutional investors, whilst others are raised directly from members. The Co-operative Banking sector outside of the UK is a good example of mutual institutions raising capital from their members.

Co-operative banks account for around 20% market share of EU bank deposits and loans. Although significant in total size, differences in co-operative models and varying concentrations of co-operative banks by country combine to give the sector a varied appearance.[25] Finland, France, Italy, The Netherlands and Canada have market shares in excess of 20% (32.8%, 22.8%, 33.1%, 34.5% and 37.9%)[26] whilst Austria, Cyprus and Germany have co-operative banking sectors with a market share in excess of 10% for credits and deposits (16.4%, 19.9% and 18.2% respectively.)

Despite similar values there is no single co-operative bank model. Different models have emerged in response to different cultural and business environments and the result is a complex and diverse set of institutions.

Member capital takes different forms, depending on the jurisdiction concerned, but typically it is in the form of par value shares that can be paid a dividend out of profits.

A distinctive benefit of co-operative banks is that they contribute to overall system stability by accessing an additional source of capital via members in addition to the investor base.

25 The outlook for Co-operative Banking in Europe 2012, by Veronique McCarroll & Sarah Habberfield, Oliver Wyman
26 Exhibit 22: EACB European Co-operatives' Key Statistics 2010 (averaged for credits and deposits)

Traditionally, co-operatives had higher levels of Tier 1 capital than other banks, although intensive capital raising efforts by shareholder banks since the crisis has changed this picture.

Co-operatives do still raise capital through commercial markets, which is a useful additional source of capital given the challenge of increasing capital levels solely by retaining member dividends.

The reliance on member capital since the financial crisis has both advantages and disadvantages. On the one hand, reliance on member capital makes it hard for co-operatives to raise capital quickly (as has been done by the shareholder banks.) However, although member capital can take longer to raise, it is a stable source of capital at a time when investor appetite for banks' capital raising efforts is low.

"The Co-operative Banking sector outside of the UK is a good example of where mutual institutions raise capital from their members"

To illustrate how this works, we would like to focus on two specific examples: Rabobank from the Netherlands and Desjardins Group from Canada.

Rabobank

Rabobank is a co-operative bank, founded in 1972, as a result of a merger between the regional central banks of the Dutch credit union movement. It is a secondary co-operative owned by 136 local banks. These banks in turn are owned by their individual members.

It is one of the largest banking groups in the Netherlands, and among the top 30 banks in the world in terms of asset size. It held total assets of €752 billion in 2012. It has 10 million clients, of which 1.9 million are members, and is the largest provider of customer service banking in the country, with domestic market shares of 31% of mortgages, 39% of savings, 43% of small and medium-sized enterprises and 85% of food and agribusiness.[27]

Capital

Rabobank has a Core Tier 1 ratio of 13.2% and a Tier 1 ratio of 17.2%

Member Certificates

Rabobank Member Certificates enable members of the local Rabobanks and employees of the Rabobank Group to participate in the capital of Rabobank Nederland. The total outstanding amount of Member Certificates is €6.7 billion, they are tradable monthly on an internal market and they are classified as Core Tier 1 Capital. Rating agencies have testified that Member Certificates are as close to equity as can be issued by a cooperative bank.[28]

Hybrid capital & Tier 2 issues

Rabobank also has two types of hybrid capital;

New style hybrid capital – current Equity Capital Ratio is 15.3% (Dec 2012). In the unlikely event that the Equity Capital Ratio falls below 8%, the new style Hybrid Tier 1 will absorb losses pro-rata with Equity Capital and other loss absorbing instruments.

Old style hybrid capital – total outstanding of €5.7bn (€ equivalent) in several currencies and formats.

Tier 2 – total outstanding of €6.4bn (€ equivalent) in several currencies and maturities. It is currently increasing the buffer for senior unsecured bondholders.

Senior contingent notes

March 2010: Rabobank issued €1.25bn benchmark 10 year fixed rate senior note. This has an annual coupon of 6.875%. Its Equity Capital Ratio was 15.3% in December 2012 and in the unlikely event that the Equity Capital Ratio falls below 7%, this triggers a write-down to 25% of par and immediate repayment of this redemption price, thus strengthening Rabobank's capital. Rabobank issued this note for 3 reasons. Firstly, it was hedging tail risk reflecting Rabobank's prudence; secondly, further enhancing Rabobank's creditworthiness and thirdly, it was anticipating future regulatory requirements.

In-depth access to funding

In the most challenging market environment Rabobank continues to have an in-depth access to international capital markets. For example, Rabobank borrowed in 2009, 2010 and 2011 more than €40bn annually and in 2012 €28bn in senior unsecured format. Rabobank has never issued in Covered Bond format, nor in Government Guaranteed format and the average maturity of issuance done in recent years exceeds 5 years with more than €55bn maturing in 2017 or later.

27 www.nwcua.org/system/media/1023/original/Rabobank%20Presentation%20-%20Arnold%20Kuijpers.pdf
28 http://uk.reuters.com/article/2011/12/13/idUKWLA002920111213

The Desjardins Group (Mouvement des caisses Desjardins)

Founded in 1900, The Desjardins Group is now the largest association of credit unions in North America. It is a federation of 376 local Caisses populaires Desjardins, which serve 5.8 million members and have total asset of C$196 billion (As at 31 December 2012).

It undertakes a full range of financial services business, including current accounts, insurance, investment banking, business banking and related services.

Basis of its capital

Desjardins is one of the best-capitalized financial institutions in North America with a Tier 1 Capital Ratio of 16.8%.[29] It has a Tier 1a Capital Ratio of 16.0%.

Over the years Desjardins has had differing types of capital stock, outlined as follows:

Qualifying shares (since 1900, modified in 1988):

- Issued by the caisses (unlimited number)
- Par value of $5
- Members have only one vote each, no matter how many qualifying shares they own
- Redeemable upon member's resignation
- No remuneration or returns
- Eligible as Tier II capital

Permanent shares (since 1989):

- Issued by the caisses (unlimited number)
- Par value of $10 with low risk and cannot be redeemed (except under certain conditions stipulated by the Act)
- Can be repurchased by the trust fund when the member wishes to dispose of them
- Do not carry any voting rights
- Rate of interest determined annually by the general meeting of each caisse
- Interest may be paid in cash or in shares
- Not covered by deposit insurance
- Possibility of redemption of shares at age 60
- Transfer option (individual or business member): To another member of the same caisse or to a trust fund

Surplus shares (since 2007):

- Issued by the caisses (unlimited number)
- Par value of $1, redeemable at the option of the caisse after 5 years
- Do not carry any voting rights
- Rate of interest determined annually by the general meeting of each caisse
- Interest paid in shares
- Can be redeemed at retirement if held for at least 7 years (individual members)
- Can be transferred between members of the same caisse
- Not covered by deposit insurance

Federation Shares

A new kind of 'F' share (federation share) designed to be Tier 1 under Basel III was launched in June 2012. Shares are issued through local caisses. Holders cannot redeem the shares but there is a closed stock exchange, and people are confident they can be traded with other members.

These kinds of shares have worked well for Desjardins - even during the financial crisis very few people asked for them back. For the next period, Desjardins will offer C$200m - C$300m a year to replace old stock.[30]

Over time the 'F' share will be the norm for Desjardins with new shares offered to repay old offerings.

These instruments have been a highly successful way for Desjardins to raise capital with a share issuance of up to C$1.2 billion in June 2012. They make clear to potential investors that – as with

29 Desjardins Group's 2012 Annual Report and Bloomberg

30 Presentation to Mutuo, July 2013

any investment - 'F' shares carry risk as they are loss absorbing. They issue a prospectus, and make clear that this product is not for everybody. The shares can be attractive for small businesses too.

Typically, purchasers do not usually consult a financial advisor. When the shares are bought the seller points out that this is not a deposit, that there could be no yield one year etc. However, institutional investors are not invited to purchase shares; the Group values stability and would not want a big withdrawal at one time. Typically individual investors hold a few thousand dollars each.

Desjardins formulated the 'F' share to meet Basel requirements. This is outlined as follows:

'F' Capital shares (since 2012):

- Issued by the Federation (unlimited number)
- Par value of $10, with medium risk level
- Can be repurchased by the trust fund when the member wishes to dispose of them
- Minimum deposit of $100
- May be issued to members of Desjardins caisses in Quebec, including auxiliary members
- The rate is voted on each year according to the Federation's policy
- Not covered by deposit insurance
- Buying and selling by the trust fund: An owner can ask the Federation to buy his shares to sell them to another member. The Federation is under no obligation to accept in order to ensure a supply-demand balance.

More on 'F' Shares

- May 1, 2012: the Federation obtained venture reporting issuer status from the Autorité des marchés financiers (AMF)
- The Federation has the right, by resolution of the Board of Directors and with the authorization of the AMF, to unilaterally redeem 'F' capital shares at any time
- The Federation may purchase 'F' capital shares by private agreement with the authorization of the AMF
- June 18, 2012: the Federation launched a capital share issuance of up to $1.2 billion
- These capital shares, currently included in Tier 1 capital under Basel II, meet the upcoming capital regulatory requirements (Basel III) as Tier 1a capital
- In case of liquidation, no redemption unless each caisse meets regulatory minimal capitalization requirements
- An amount of $1,025 million had been issued as at December 31, 2012
- March 20, 2013: the Federation added another $300 million to the share issue launched in June 2012, bringing the total to $1.5 billion

Objective:

- Reinforce financial stability
- Meet new capital requirements
- Continue to be among the best capitalized financial institutions within the industry
- Diversify capital sources
- Engage members to participate in the capitalization of the Desjardins Group

3.4

How Smaller Mutuals can raise capital together

We recognise that the issuing of new shares will be something that larger mutuals will be interested in and that the cost and complications of establishing a process for issuance may be prohibitive to smaller organisations.

We believe that it is therefore worth exploring how smaller mutuals with a similar corporate purpose may act together to issue such shares, potentially through special purpose vehicles.

Hoel et al studied the interesting example of Australian credit unions and how they came together to raise Tier 1 and Tier 2 capital in a collective manner from investors:[31]

'In 2006, 21 Australian credit unions collaborated to obtain a total of A$100million (US$85M) in capital from outside investors. Half the total raised was for Tier 1 capital at 20 credit unions, and half was for Tier 2 capital at 21 credit unions. Funds obtained through this effort qualify as Tier 1 and Tier 2 capital under the guidelines of the Australian Prudential Regulation Authority.

By working together, marketing and overall funding costs were more favourable. CUNA Mutual, the leading credit union insurer in the United States with extensive Australian credit union business, and ABN- AMRO, a global financial conglomerate based in the Netherlands, played key roles in co-ordinating, structuring, and placing the offering. The transaction involved creating two special- purpose vehicles: a Tier 1 trust and a Tier 2 special- purpose issuer (SPI). Tier 1 instruments sold to investors are perpetual, noncumulative, and subordinate to almost all other claims including those of depositors, thereby satisfying key Tier 1.'

"We recognise that the issuing of new shares will be something that larger mutuals will be interested in..."

31 Alternative Capital for US Credit Unions? A review and Extension of Evidence Regarding Public Policy Reform, Robert F. Hoel, Colorado State University

4

Towards a UK solution – The Mutuals' Redeemable Shares Bill

In 2012, The Ownership Commission recommended:

> 'The mutual form should be re-founded, with a new emphasis on preserving the basic principle of mutual ownership. Mutuals should have the opportunity to choose a legally binding corporate form that enshrines the principle of disinterested distribution, as is common in other EU states.'[32]

By having the power to raise new capital, mutuals would be able to conduct their business with the confidence that, if necessary, they could build capital in a variety of ways beyond the slow retained-earnings approach.

This is already understood in the United States, when examining the case for options for credit union capital there, Hoel et al noted that:

> 'Steps should be taken promptly to repeal or reform statutes and regulations that prohibit credit unions from obtaining alternative capital. No compelling reasons to delay were uncovered during the course of this research.'[33]

Through our work on capital in the UK mutual context we have reached the same conclusion in this country, and we offer this paper and the Bill now presented to Parliament, as our contribution to this debate.

The Mutuals' Redeemable Shares Bill

On 22 July 2013, Lord Naseby introduced a Private Members' Bill in the House of Lords which will, if passed, be very helpful to co-ops, friendly societies and mutual insurers. It removes some of the technical legal obstacles that limit their use of shares to raise capital. This Bill lays the essential legal foundations to make capital more easily available to co-operatives, friendly societies and mutual insurers.

32 Ownership Commission 2012
33 Alternative Capital for US Credit Unions? A review and Extension of Evidence Regarding Public Policy Reform, Robert F. Hoel, Colorado State University

The Bill is a vital part of the improved legal infrastructure being developed for mutuals over the next year or two. That includes the new Co-operatives and Community Benefit Societies Bill, increased limit on withdrawable share holdings in and regulations to apply the administration procedure to those societies (Budget 2013 at para 2.260), commencement of the Co-operative and Community Benefit Societies and Credit Unions Act 2010, and the publication of new FCA Guidance.

The Bill also complements the valuable work of Co-operatives UK and the Locality Community Shares Unit (funded by the UK Department for Communities and Local Government) which makes the use of IPS shares available as a concrete reality on the ground and promotes best practice and investor protection.

The Mutuals' Redeemable Shares Bill 2013, will permit mutual societies, to issue a new form of share capital and access a source of funding which has not been available to them before.

The recognition in principle that mutual societies can issue redeemable shares and the creation of a legislative framework within which they can do so marks a great leap forward: up to now there has been no legal mechanism under which mutual insurers can raise capital beyond retaining profits from their trading activities.

Why is the Mutuals' Redeemable Shares Bill needed?

As discussed above, the Bill addresses a number of problems faced by different types of mutuals when it comes to using share capital to raise funds.

For friendly societies, it would for the first time permit societies registered as corporate bodies under the Friendly Societies Act 1992 to issue

shares – see clauses 1(1) and 5. For mutual insurers, it would allow those using either a company structure or a structure based on their own private Act of Parliament to issue shares – see clauses 1(1) & 5. Currently a company limited by guarantee, the structure used by some mutual insurance companies, may not have share capital if it was registered after 1980 – Companies Act 2006 s5.

For industrial and provident societies, the problem is about the possibility of exit for holders of shares that are not defined as "withdrawable". Since January 2012 when the limit on holdings of non-withdrawable society shares was removed, there has been interest in exploring the use of such shares. However, it is likely that the old Company Law "Rule in Trevor v Whitworth" would apply to such shares to prevent their purchase or redemption by the society itself (see the Hayes vs Snaith debate[34] for the arguments on this). That means that people holding non-withdrawable shares in societies need to transfer them to other people to recover their investment. That severely limits the effect of the liberalisation of the holding limit.

How the Mutuals' Redeemable Shares Bill would work

Like the previous private members' Acts used to improve the law for co-operative or mutuals in the UK in 2002, 2003, 2007 and 2010, this Bill, if it becomes law, will empower HM Treasury to change existing legislation by the use of secondary legislation to permit the use of redeemable shares.

That means that if the Bill becomes Law, its effects will still depend on the preparation of one or more Statutory Instruments, consultation on them, and a resolution of each House of Parliament to approve them under the affirmative resolution procedure – clause 1(3). That will all take time.

34 http://www.iansnaith.com/?p=294#comment-459

The Nature of Redeemable Shares

The Bill proposes that redeemable shares in an IPS may be transferable but not withdrawable – clause 1(2)(a). That leaves the society's rules or the terms of issue to decide on the details of the rights attached to the share, subject to other provisions of the Bill, as long as the share is not withdrawable. That will permit the use of redeemable shares without limit on the value held. For friendly societies and mutual insurers, that question is left to the regulations to be issued by HMT to permit such shares – clause 1(2)(b) & (c).

"The Mutuals' Redeemable Shares Bill 2013, will permit mutual societies, to issue a new form of share capital and access a source of funding which has not been available to them before."

These shares are not financial products, but ordinary capital in the mutual. Depending on the terms of issue, they may be purchased by individuals or institutions. Outside of the UK, co-operative organisations routinely issue similar types of shares, and members often purchase modest numbers of shares. For example, in the recent Desjardins Group (Canada) offer of 'Federation Shares,' the entire allocation of $CAN 1.2 billion was purchased by individual members, typically making investments of around $CAN 2,000 – 4,000 each.

In many European countries, co-operative banks issue similar member capital, and pay a dividend on the shares. Typically, the national regulator will determine that dividend payments are appropriate, to ensure that it is only paid from profits. Share terms can vary: some could be just available to institutions etc.

When will it be possible to redeem the shares? That will be found in the terms of issue of the shares and there is flexibility about those terms.

"The decision on whether to issue redeemable shares will have to be to be made by members"

It can be a date fixed there, a date worked out as the terms provide, or a date chosen either by the mutual or the holder of the share – clause 2(1).

After redemption, there will have to be at least one share left which is neither withdrawable nor redeemable – clause 2(4). This reflects the equivalent Companies Act provision on redeemable shares and ensures that there will always be at least one share in the mutual which has not been redeemed.

Other terms of redeemable shares, e.g. par value, number issued, minimum and maximum holding, and detailed provisions for redemption, can be left to the mutual's board as long as either the mutual's constitution or a members' resolution allows that, otherwise the mutual's constitution must itself set out those terms - clause 3(1) to (4).

Protecting Mutuality

The decision on whether to issue redeemable shares will have to be to be made by members - the mutual's constitution must allow it and may restrict the use of them – clause 2(3) & (4). That means the members will have to decide whether or not to allow their use and can define the limits within which they can be issued. This protects basic member control.

In addition, the Bill requires that redeemable shares:

- are held only by members
- entitle the member to only one vote regardless of how many shares they hold
- only give the holder a level of return allowed by the constitution of the mutual
- can be redeemed only at nominal (par) value with no other bonus or right to participate in surplus
- Clause 1(2)(d) of the Bill also prevents the use of redeemable shares for demutualisation. It limits the voting rights of anyone who gains membership only by holding a redeemable share as they cannot propose or vote on a resolution to convert the mutual into a company – clause 4. So even the one vote the member has cannot be used in that way. On the other hand, a user-member of the mutual who happens to hold a redeemable share will still be able to use their single vote on any demutualisation proposal.

Protecting Creditors

The basis for the rule in Trevor v Whitworth that prevents corporate bodies from buying back or redeeming their own shares is creditor protection. People who lend or give credit to companies and other corporate bodies, whose owner-members have limited liability for business debts, take the risk of business failure. However, if that happens and the business is wound up, there is a clear order of priority among the creditors for a share of the remaining assets. The rights of holders of shares are postponed and they get nothing until all the debts and costs of the insolvency process have been paid. If the company buys back its shares or redeems them and then is wound up the holders of shares may have jumped the queue. As a result the courts refused to allow companies to do that.

Over the years, Parliament relaxed that rule and the current position is that, so long as certain procedural safeguards and rules about funding the redemption or buy back are observed, a buy back or redemption of shares is allowed. Those safeguards can be found in sections 658-737 of the Companies Act 2006.

Broadly, the redemption or purchase must be out of distributable profits or the proceeds of a new share issue. However, in the case of a private company, if sufficient funds are not available

from those sources, shares may be redeemed out of capital, as long as the directors and auditors formally report on the solvency of the company, the redemption is approved by a special resolution and public notice is given of the redemption out of capital. It is then open to any shareholder who voted against the resolution or any creditor to apply to the court for the resolution to be cancelled.

Clause 3(5) of the Mutuals' Redeemable Shares Bill 2013 allows regulations to apply the same protections where redeemable shares are issued by mutuals.

A Vital Development

We must hope that this Bill succeeds in its passage through the two Houses of Parliament despite being a Private Members' Bill. It deals with a basic legal problem for co-operatives and extends the ability of friendly societies and mutual insurers to raise capital. It also represents an important level of co-operation between those different but related mutual sectors.

There may also be a commercial demand for holders of term assurance policies to be able to re-invest the proceeds of their policies into a mutual society when the policy matures and redeemable shares could be a suitable vehicle for them to do so. This is likely to be particularly attractive to societies which offer 10 year friendly society tax exempt savings plans or which still have a book of child trust funds.

A further possibility is that the Bill will encourage a new form of mutual society to evolve in which both customers and investors have a stake and a voice in the governance of the mutual. Such structures are possible under the current law, Kent Reliance being an example from the building societies sector. However, creating the Kent Reliance model involved complex legal structures and business transfers; the Bill opens up the prospect for mutual societies to achieve a similar commercial result much more simply and cheaply.

In summary, then, the Bill is a necessary first step towards opening up new sources of capital for mutuals. It is only a first step and much detailed work remains to be done to turn this exciting possibility into reality.

Appendix – author Biographies

Appendix – author Biographies

Rt. Hon. Lord Naseby PC

Michael Morris contested Islington North for the Conservatives in the 1966 general election and was subsequently successfully elected as Member of Parliament for Northampton South, a seat he represented from 1974 to 1997.

As an MP, Morris was Parliamentary Private Secretary to both Hugh Rossi and to Michael Alison as Ministers of State, Northern Ireland 1979-81. He was later elected to the position of Deputy Speaker and Chairman of Ways and Means, a position he held from 1992 to 1997.

He was appointed a Life Peer in 1997, as Lord Naseby. He currently sits on the House of Lords Select Committee for Standing Orders (Private Bills). His political interests include Energy, health service, exports, marketing, parliamentary procedure, financial services, and questioning government of the day.

Lord Naseby has a strong interest in the mutual sector. From 1998 to 2005, he was Chairman of Tunbridge Wells Equitable Friendly Society. In Parliament, he was Vice Chairman, All Party Parliamentary Group for Building societies and Financial Mutuals 2004 – 2013; Vice Chairman, All Party Parliamentary Group for Mutuals 2013 and the Lords Sponsor of the Building Societies (Funding) Mutual Societies Transfers Act (2007).

He maintains interests in a number of countries, including Brunei, Cayman Islands, Chile, France, India, Maldives, Singapore, Sri Lanka and he was a Member, Council of Europe and Western European Union from 1983-91.

Peter Hunt

Peter has been Chief Executive of Mutuo since 2001, which he founded as the first cross mutual sector body to promote mutual business to opinion formers and decision makers.

Peter has nineteen years' experience in the mutual sector, working with co-operatives, mutuals and employee owned businesses. For ten years, he was General Secretary of the Co-operative Party.

He led the Parliamentary teams which piloted four private members bills through the UK Parliament, working with all parties to update co-operative & mutual law.

He is a founder member of the management board of the Oxford Centre for Mutual and Employee-owned business, based at Kellogg College, Oxford University.

In 2011, he advised the Coalition Government on its plans to mutualise Post Office Ltd and in 2012 published the report of the Ownership Commission, a two year study into corporate diversity.

Ian Snaith

Ian works on UK and EU Co-operative and Mutuals Law as researcher, writer and consultant. He is a member of the Study Group on European Co-operative Law (SGECOL), a consultant with DWF LLP Solicitors, of Manchester.

Ian was the author of the Handbook to Industrial and Provident Society Law (Holyoake Books, Manchester) 1996 – the standard work on this area. He serves on the European Commission Working Group on Co-operative Legislation and was actively involved with the development, drafting and passage, by the UK Parliament, of the Industrial and Provident Societies Act 2002 and the Co-operatives and Community Benefits Societies Acts 2003 and 2010. In 2009-2010 he

was the UK national expert and a member of the Scientific Committee in the preparation of a report for the European Commission "Study on the implementation of the Regulation 1435/2003 on the Statute for a European Cooperative Society (SCE)" and the UK National Report (at page 971).

Ian served as a member of the HM Treasury Working Groups on the reform of both Co-operative and Credit Union Law in the UK in the run up to the enactment of the 2011 LRO which updated aspects of industrial and provident society and credit union law. He currently serves on the Technical Committee of Co-operative UK and Locality's Community Shares Unit.

John Gilbert

John is a former partner, and now a consultant, at the City and international law firm, Hogan Lovells, where he specialises in corporate and regulatory advice to mutual insurance firms. His clients range from the largest mutual insurers to small friendly societies and also include the mutual insurers' trade body, the Association of Financial Mutuals.

John's work encompasses advising individual firms on constitutional, governance and regulatory matters as well as advising on transactions such as mergers and acquisitions involving mutual insurers. He also developed the legal arguments underpinning "Project Chrysalis", the ongoing attempt by the mutual insurance sector to persuade its regulators to grant fair treatment for mutuals in a regulatory framework designed primarily for PLCs. He is currently also working in partnership with a group of Shariah scholars on a project to promote UK mutual insurers as a vehicle for ethical investments which comply with the rules of Islamic Finance.

John is the author of the chapter on friendly societies in successive editions of Sweet & Maxwell's Practitioner's Guide to the Regulation of Insurance and also edits the friendly societies section of Butterworths' Financial Regulation Service. His experience in drafting legislation extends to Hong Kong and Papua New Guinea as well as the UK.

Mark Willetts

Mark works on major projects with clients and is responsible for communications at Mutuo. In 2012, he organised the Mutual Business Leaders visit to Washington, DC.

Between 2010 and 2012, he served as Assistant Secretary to the Ownership Commission – a two year study into corporate diversity under the chairmanship of Will Hutton.

Previously, he spent four years working for a Government Minister in the House of Commons. During this time he gained extensive parliamentary and government affairs experience.

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Mutuals' Deferred Shares Act 2015

CHAPTER 13

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Mutuals' Deferred Shares Act 2015

CHAPTER 13

CONTENTS

Mutuals' Deferred Shares Act 2015

2015 CHAPTER 13

An Act to enable the law relating to societies registered and incorporated under the Friendly Societies Act 1992 and certain mutual insurers to be amended to permit or facilitate the issue of deferred shares; and to restrict the voting rights of members who hold such shares. [26th March 2015]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Power to permit or facilitate the issue of deferred shares

(1) The Treasury may by regulations make provision to permit or facilitate the issue of deferred shares by a friendly society or mutual insurer.

(2) "Deferred shares" are instruments that—

(a) are issued by a friendly society or mutual insurer ("the issuer") with the consent of the appropriate authority,

(b) can be transferred but not withdrawn,

(c) prohibit repayment of principal other than—

(i) on the winding up or dissolution of the issuer where all other sums due from the issuer to creditors claiming in the winding up or dissolution are paid in full, or

(ii) where the appropriate authority has consented to the repayment, and

(d) have such characteristics as are specified in regulations made by the Treasury under this paragraph.

(3) Regulations under subsection (1) may modify any of the following—

(a) the Friendly Societies Act 1992 (as amended from time to time);

(b) the Companies Act 2006 (as amended from time to time);

(c) any other primary legislation relating to friendly societies or mutual insurers (whenever passed);

(d) any instrument made under the legislation mentioned in any of paragraphs (a) to (c) (whenever made).

(4) Regulations under subsection (1)—

(a) may not make provision that would permit or facilitate the issue of deferred shares by a friendly society or mutual insurer where it is not authorised to do so by its memorandum, rules or constitution;

(b) may make consequential, supplementary, incidental, transitional or saving provision;

(c) may make different provision for different purposes.

(5) A deferred share issued by virtue of regulations made under subsection (1) is not a share within the meaning of the Companies Acts.

(6) The power to make regulations under this section is exercisable by statutory instrument.

(7) A statutory instrument containing regulations under this section may not be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

2 Restriction on voting rights

(1) Regulations under section 1(1) must make provision to ensure that no friendly society or mutual insurer will confer—

(a) more than one vote per person as a member on holders of deferred shares who are members of the society or insurer by virtue only of being such a holder;

(b) additional voting rights on a member of the society or insurer by virtue of being a holder of a deferred share where the member is a member other than by virtue of being such a holder.

(2) Regulations under section 1(1) must make provision prohibiting the holder of a deferred share who is a member of a friendly society or mutual insurer by virtue only of being such a holder from proposing or voting in respect of any of the following—

(a) a resolution under section 85, 86 or 91 of the Friendly Societies Act 1992 (amalgamation, transfer of engagements or conversions);

(b) a resolution to similar effect in the case of a mutual insurer, including a compromise or arrangement proposed at a meeting called under section 896 of the Companies Act 2006 (court order for holding of meeting);

(c) an arrangement made in pursuance of section 110 of the Insolvency Act 1986 (acceptance of shares etc as consideration for sale of company property) or Article 96 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989 / 2405 (N.I. 19));

(d) such other matters as the regulations may specify.

(3) References in this section to the holder of a deferred share are to the holder of a deferred share issued by virtue of regulations made under section 1(1).

3 Definitions

(1) In this Act—

"the appropriate authority" means—

(a) in relation to a friendly society or mutual insurer which is authorised by the Prudential Regulation Authority, the Prudential Regulation Authority; and

(b) in relation to a friendly society or mutual insurer which is not authorised by the Prudential Regulation Authority, the Financial Conduct Authority;

"the Companies Acts" has the same meaning as in the Companies Act 2006;

"friendly society" means a friendly society registered and incorporated under the Friendly Societies Act 1992;

"modify" includes amend, repeal or revoke;

"mutual insurer" means a body corporate that—

(a) is a mutual undertaking that—

(i) is neither a friendly society nor a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014, and

(ii) is of such description as the Treasury may specify by regulations,

(b) has no share capital, and

(c) has permission to effect or carry out contracts of insurance under Part 4A of the Financial Services and Markets Act 2000;

"primary legislation" means—

(a) an Act of Parliament,

(b) an Act of the Scottish Parliament,

(c) an Act or Measure of the National Assembly for Wales, or

(d) Northern Ireland legislation.

(2) The power to make regulations conferred by paragraph (a)(ii) of the definition of "mutual insurer" is exercisable by statutory instrument.

(3) A statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.

4 Short title, commencement and extent

(1) This Act may be cited as the Mutuals' Deferred Shares Act 2015.

(2) This Act shall come into force on such day as the Treasury may by regulations made by statutory instrument appoint, and different days may be appointed for different purposes.

(3) This Act extends to the whole of the United Kingdom.

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ORIGINAL 2011

Australian Uniform Co-operative Laws Agreement

THIS AGREEMENT is made the day of 2010

BETWEEN:

The State of New South Wales
The State of Victoria
The State of Queensland
The State of South Australia
The State of Western Australia
The State of Tasmania
The Northern Territory of Australia
The Australian Capital Territory

RECITALS:

(A) It is generally acknowledged to be in the interests of the public and of persons and authorities concerned with the administration of the laws regulating co-operatives that there should be, as far as possible, uniformity both in those laws and their administration in the States and the Territories of Australia.

(B) The Governments of the States and the Territories of Australia are agreed that as far as possible such uniformity will be achieved by establishing and implementing the Scheme, the objects of which are to ensure that:

(a) the legislation relating to the Scheme is, and continues to be either:

(i) uniform throughout Australia; or

(ii) in any State or Territory where it is not uniform, consistent with the uniform laws;

(b) the legislation is administered, as far as possible, on a uniform basis;

(c) as appropriate from time to time, changes in the legislation are proposed for consideration and amendments made when the need for reform arises.

(C) Agreement has been reached between the States and the Territories that, without fettering the powers of future Parliaments, the Scheme will provide for the introduction of Initial Legislation into the Parliament of the State of New South Wales and require the other States and Territories to either:

(a) adopt that Initial Legislation; or

(b) enact and maintain legislation which is consistent with the Initial Legislation.

NOW IT IS AGREED as follows:

Part I - Interpretation

1. In this Agreement, except where a contrary intention appears:

   (a) "**State**" means a State of Australia that is, for the time being, a party to this Agreement;

   (b) "**Party**" means a State or Territory and "the Parties" has a corresponding meaning; and

   (c) "**Territory**" means a Territory of Australia that is for the time being a party to this Agreement.

2. In this Agreement, unless the contrary intention appears or the context otherwise requires:

   "**Alternative Consistent Legislation**" means the legislation referred to in clause 9(3)(a)(ii) and 9(3)(b) and regulations thereunder;

   "**Amend**" means directly amend Co-operative Legislation by the insertion or omission (or both) of a matter or indirectly amend Co-operative Legislation by making provisions that would significantly alter its effect, scope or operation;

   "**Amending Legislation**" means:

   (a) legislation amending, repealing or adding to any previous Co-operative Legislation already enacted in accordance with the Scheme;

   (b) regulations amending, repealing or adding to regulations made under the Co-operative Legislation;

   "**Application of Laws Legislation**" means the legislation referred to in clause 9(3)(a)(i) and regulations thereunder, being legislation or other instrument that applies the Initial Legislation within a State or Territory and may provide for matters pertaining to the administration of Co-operative Legislation and other matters as set out in clause 9(5);

   "**Co-operative Legislation**" includes the Initial Legislation, any Application of Laws Legislation, any State Administration Legislation, any Amending Legislation and regulations made under any of them but does not include Alternative Consistent Legislation;

   "**Initial Legislation**" means the proposed legislation referred to in clause 9(l) and any amendment to that legislation made under Part V of this Agreement;

   "**Legislation**" includes regulations made under the Co-operative Legislation;

   "**MCCA**" means the Ministerial Council on Consumer Affairs which for the purposes of this Agreement comprises the members in accordance with Part VIII of this Agreement or such body as succeeds it or for the time being performs the functions carried out by the Ministerial Council on Consumer Affairs as set out in this Agreement;

   "**Parliament**" includes the Legislative Assembly of each of the Northern Territory of Australia and the Australian Capital Territory;

   "**State Administration Legislation**" means legislation that provides for the administration of Initial Legislation and any other matters referred to in clause 9(5)

and it also includes any matters under clauses 12(b) or (c), if any of those matters are not included in the "Application of Laws Legislation";

"**the Scheme**" means the scheme of legislative and administrative statutory instruments and procedures that is contemplated by this Agreement;

"**Transitional Legislation**" means saving and transitional legislation of a Party dealing with the introduction of the Scheme.

3. In this Agreement, unless a contrary intention appears:
   (a) a reference to a Part is a reference to the relevant Part of this Agreement;
   (b) a reference to a clause is a reference to the relevant clause of this Agreement;
   (c) a reference to a sub-clause of the clause in which the reference appears, or of such other clause as the reference indicates, is a reference to the relevant clause of this Agreement; and
   (d) where a fraction of members of the MCCA is not equal to a whole number, then the next highest whole number shall be deemed to be equal to that fraction.

4. This Agreement may be referred to as the Uniform Co-operative Laws Agreement.

Part II — Operation of Agreement

5. (1) This Agreement shall come into force when it has been executed by all the Parties.
   (2) This Agreement may be amended only by unanimous resolution of the MCCA.

6. In the event that a Party ceases to be a party to this Agreement this Agreement shall nevertheless continue in force with respect to the other Parties.

7. (1) A State or Territory (except the State of New South Wales) shall cease to be a Party to this Agreement if it fails within twelve (12) months, or such further time as may be approved by unanimous resolution of the MCCA, of the assent to the Initial Legislation to:
      (a) secure the passing and proclamation (or in the case of the Australian Capital Territory the commencement) of either the Application of Laws Legislation or the Alternative Consistent Legislation under clause 9(3)(a)(ii); or
      (b) receive the unanimous approval of the MCCA to Alternative Consistent Legislation under clause 9(3)(b).
   (2) A State or Territory shall cease to be a Party to this Agreement if that State or Territory:
      (a) withdraws from this Agreement pursuant to Part X; or
      (b) breaches clause 10(2); or
      (c) introduces any legislation which, if passed, would amend, directly or indirectly, or otherwise fails to maintain the Alternative Consistent Legislation so that it, or its application or operation, as the case may be, is

not uniform or consistent with the Initial Legislation as amended and in force from time to time.

(3) The State of New South Wales shall secure the proclamation of the Initial Legislation.

Part III — Establishment of Scheme

8. The States and the Territories of Australia will take such action as is provided for by this Agreement and is otherwise requisite on their respective parts to achieve the objectives set out in the Recitals by initiating and operating the Scheme.

Part IV — Initial Legislation

9. (1) The State of New South Wales will submit to its Parliament legislation which has been approved by a unanimous resolution of the MCCA to form the basis of the Scheme and take such steps as are appropriate to secure the passage of the legislation by such date as may be approved by a unanimous resolution of the MCCA.

(2) The State of New South Wales will as soon as practicable after the passage of the legislation referred to in clause 9(l) submit to its Executive Council for making by it regulations under the Initial Legislation which have been approved by a unanimous resolution of the MCCA.

(3) Each State and Territory (other than the State of New South Wales) will, as soon as practicable after the steps referred to in clause 9(l) have been satisfied either:

(a) submit to the Parliament of that State or Territory:

(i) its Application of Laws Legislation which has been approved by a unanimous resolution of the MCCA; or

(ii) legislation which is either uniform with the Initial Legislation or is such that an act or thing which would be lawful under the Initial Legislation would also be lawful under the legislation of that State or Territory

and shall in either case take such steps as are appropriate to secure the passing thereof; or

(b) seek approval by unanimous resolution of the MCCA of legislation which the State or Territory enacted prior to the Initial Legislation being enacted but after the MCCA approved by unanimous resolution the legislation to form the basis of the Scheme.

(4) Each State and Territory (except the State of New South Wales) will as soon as practicable after the passing of the legislation referred to in clause 9(3)(a) or the approval of legislation referred to in clause 9(3)(b), and the making of the regulations referred to in clause 9(2) ("the New South Wales Regulations") either:

(a) submit to its respective Executive Council or other appropriate body, for making by it regulations:

(i) in the case of clause 9(3)(a)(i), uniform with the New South Wales Regulations; and

(ii) in the case of clause 9(3)(a)(ii), either uniform with the New South Wales Regulations or such that an act or thing which would be lawful under the New South Wales Regulations would also be lawful under the regulations of that State or Territory; or

(b) seek approval by unanimous resolution of the MCCA of regulations which it made prior to the Initial Legislation being enacted but after the MCCA approved the regulations under the Initial Legislation by unanimous resolution.

However, in either case:

(c) those regulations may, if necessary, differ from the New South Wales Regulations in respect of any of the matters referred to in clause 9(5); and

(d) jurisdictions with different established procedures for the adoption of regulations under template legislation schemes shall ensure that the New South Wales Regulations and any amendments are adopted within 3 months of their coming into force or such other date as may be approved by a unanimous resolution of the MCCA.

(5) Application of Laws Legislation of any State or Territory shall not amend, alter or modify the Initial Legislation in its application to that State or Territory except as follows:

(a) the alteration of a provision that refers to another law, so as to reflect differences in the jurisdiction in the law so referred to, or the omission of such a provision if the law referred to is not relevant in the jurisdiction;

(b) amendments as to the manner of referring to provisions of the Initial Legislation and changes to the set out of provisions, their numbering and headings;

(c) the alteration of "State" or "Territory" where appropriate, and alterations necessarily consequential upon such an alteration;

(d) amendments necessary because of the different procedures within a jurisdiction for the commencement of the Initial Legislation and the making of regulations;

(e) amendment of the manner of expressing a monetary penalty for an offence against the Initial Legislation (but not so as to alter the actual amount of the penalty);

(f) appointment of any officers or constitution of any bodies to administer the Co-operative Legislation and the establishment of their powers;

(g) procedures for the exercise of any functions by any officer appointed or body constituted under the Co-operative Legislation;

(h) fees charged for the exercise of the functions referred to in (g) and the allocation of stamp duty;

(i) allocation and delegation of administrative functions and discretions;

(j) procedures for appeal processes identified in the Co-operative Legislation;

(k) procedures for the making of modifications, exemptions and other orders under the Initial Legislation;

(l) use of words connected with "co-operatives" and "cooperatives";

(m) administrative matters pertaining to the supervision and inspection of co-operatives; and

(n) such other amendments as are approved by a unanimous resolution of the MCCA.

(6) The MCCA is required to keep the Initial Legislation under review to determine whether the policy objectives remain valid and whether its terms are appropriate for securing those objectives.

Part V — Amending Legislation

10. (1) The purpose of this clause is to make provision in regard to amendments to the Co-operative Legislation, subject to clause 12.

(2) Any Amending Legislation must not be introduced by a State or Territory unless there has been a resolution of the MCCA, passed by a majority comprising at least two thirds of the members who are present and vote, approving the Amending Legislation in the form in which it is introduced or made.

(3) Notwithstanding sub-clause (2) of this clause 10, any regulations amending the regulations originally made under the Initial Legislation require a unanimous resolution of the MCCA, as required by clause 15(2)(c), if such a resolution is made before the proclamation date of the Initial Legislation.

(4) Notwithstanding sub-clause (2) of this clause 10, the approval of the MCCA to such Amending Legislation may be given so as to permit the making of alterations of a drafting nature or alterations of other kinds or for other purposes as specified in the approval, without the need for further approval.

(5) The State of New South Wales will as soon as practicable after resolution of the MCCA passed by a majority comprising at least two thirds of the members who are present and vote -

(a) submit to its Parliament any Amending Legislation; or

(b) in the case of Amending Legislation in the form of a regulation, submit to its Executive Council for making such regulation

and shall take such steps as are appropriate to secure the passing, commencement and making thereof.

11. Nothing in this Agreement requires a State or Territory which has passed Alternative Consistent Legislation to obtain the approval of the MCCA to amendments to such legislation.

Part VI — Non-Uniform Matters

12. Notwithstanding any other provision in this Agreement, a State or Territory including New South Wales may secure the passage of legislation to provide for or amend:

    (a) the matters listed in clause 9(5) as they apply to that State or Territory without the need for any approval of the MCCA;

    (b) special provisions for trading co-operatives without share capital;

    (c) such other matters, from time to time, as are approved by a majority resolution passed by at least two thirds of the members of the MCCA who are present and vote.

Part VII — Conflicting Legislation

13. (1) A State or Territory will not submit legislation to its Parliament nor take action for the making of regulations which will, upon coming into force, conflict with or negate the operation of the Co-operative Legislation or, in the case of Alternative Consistent Legislation, conflict with or negate its uniformity with the Scheme, unless:

    (a) there is an important reason why such legislation should be introduced; and

    (b) the MCCA is notified as soon as possible.

    (2) Either the Co-operative Legislation or the Alternative Consistent Legislation, as the case may be, will apply in relation to the operation of co-operatives in each jurisdiction. Subject to the provisions of any Transitional Legislation, the Co-operatives Legislation or the Alternative Consistent Legislation will apply only to acts, matters or things occurring on or after the commencement of the Co-operatives Legislation or the Alternative Consistent Legislation, as the case may be.

14. Any additional legislative or other action required within a Party's jurisdiction to implement the Initial Legislation shall not modify the effect of the Initial Legislation except in such a way as may be approved by unanimous resolution of the MCCA or as otherwise permitted by this Agreement.

Part VIII — MCCA

15. (1) The MCCA has the functions conferred on it by this Agreement.

    (2) Without limiting the generality of sub-clause (1) of this clause 15, the functions of the MCCA shall include:-

    (a) consideration and review of the Co-operative Legislation and its administration;

    (b) the approval of the Initial Legislation by unanimous resolution;

    (c) the approval until the proclamation date of the Initial Legislation of proposed regulations under the Initial Legislation by unanimous resolution

and thereafter by a majority vote comprising at least two thirds of the members who are present and vote; and

(d) the approval of Amending Legislation passed by a majority vote comprising at least two-thirds of the members who are present and vote.

16. (1) When undertaking functions in connection with this Agreement the MCCA shall observe the procedures for its operation described in this Agreement.

(2) For the purposes of this Agreement the Minister responsible for consumer affairs or fair trading of each Party is a member of the MCCA and remains a member only while the Party appointing that member remains a Party to this Agreement.

17. (1) A Minister who is acting for a Minister who is a member of the MCCA may act as a member of the MCCA in place of the member.

(2) A member of the MCCA may appoint a delegate to act as a member of the MCCA in place of the member. Such an appointment may be limited to a particular meeting or meetings or to a particular period or particular periods, and may be revoked at any time.

(3) In this Agreement -

(a) **"acting member"** means a person who under either sub-clause (1) or sub-clause (2) of this clause 17, acts in the place of a member; and

(b) a reference to a member includes an acting member.

(4) Without limitation, an acting member may in that capacity:

(a) attend and participate in meetings of the MCCA in place of the member concerned (including meetings referred to in clause 19(3)); and

(b) exercise the voting rights of the member concerned (including voting rights under clause 23).

(5) If a member of the MCCA does not have responsibility for the administration of laws in relation to co-operatives, the member:

(a) shall consult with the relevant responsible Minister in that member's jurisdiction in relation to all matters arising in connection with this Agreement; and

(b) if practicable, arrange for the substitution of the relevant responsible Minister as acting member in any MCCA meeting dealing with matters arising in connection with this Agreement.

18. (1) The MCCA may, by unanimous resolution, and on such terms as it thinks fit, confer non-voting observer status on a representative of a government that is not a party to this Agreement.

(2) The representative's observer status ceases when a member of the MCCA notifies the Chairperson of the MCCA that the member does not support continuation of that status.

19. (1) At least one meeting of the MCCA to consider co-operative law matters shall be held in each year.

(2) A meeting of the MCCA may be convened by at least one third of the members by notice of fourteen (14) days or of such other period as may be accepted by all members for the purpose of the meeting.

(3) A meeting of the MCCA may be held wholly or partly if all members so agree, by means of telephone, television or some other mode of communication (electronic or otherwise) approved for the purposes of this sub-clause by the MCCA.

(4) Members of the MCCA who take part in a meeting specified in sub-clause (3) of this clause 19 are taken to have been present at the meeting although they were not all present at the same place at the time when the meeting was so held.

(5) Clause 18 extends to a meeting referred to in sub-clause (3) of this clause 19 and references in clause 18 to observing a meeting of the MCCA extend to observing the meeting in whatever way the meeting is held.

(6) The MCCA may determine, in so far as it is not already provided for in this Agreement:

(a) the notice of meeting to be given to its members and the manner of giving notice; and

(b) the procedure at its meetings; and

(c) the manner in which and by whom its decisions are recorded and the procedure for confirmation of the correctness of the record.

20. (1) The quorum for a meeting of the MCCA shall be two thirds of the members.

(2) A unanimous resolution of the MCCA shall not be taken to have been passed unless all members of the MCCA were present and voted in favour of the resolution.

21. The Chairperson of a meeting of the MCCA shall be decided by the MCCA prior to or, if not previously decided, at the meeting.

22. (1) Each member of the MCCA shall have one vote.

(2) The Chairperson shall not have a casting vote.

23. (1) A member may cast a vote in respect of a matter referred to all members of the MCCA even though the MCCA is not then in session and whether or not the resolution has been considered at a meeting of the MCCA.

(2) For the purposes of sub-clause (1) of this clause 23, a vote may be cast by communicating by facsimile transmission, or by any other mode of communication approved by the MCCA, to the person or persons carrying out the secretariat functions for the MCCA as determined under clause 24 or other recipient approved by the MCCA.

(3) Clause 18 extends to voting referred to in this clause, and references in clause 18 to observing a meeting of the Council extend to observing the business of the MCCA in whatever way it is conducted.

24. The secretariat functions for the MCCA will be carried out by such person or persons as the MCCA may from time to time determine.

Part IX — Administration

25. (1) Each Party which enacts either the Initial Legislation or Application of Laws Legislation shall use its best endeavours to ensure that as far as is reasonably possible the administration of the Co-operative Legislation is uniform.

(2) Each Party which enacts Alternative Consistent Legislation shall use its best endeavours to ensure that as far as is reasonably possible the administration of such legislation remains consistent with the administration of the Initial Legislation and otherwise uniform with the Scheme.

Part X — Withdrawal

26. (1) A Party may at any time by notice in writing to the MCCA withdraw from this Agreement and shall cease to be a Party when the notice of withdrawal takes effect.

(2) A notice of withdrawal under this clause 26 shall take effect on a date to be specified in the notice which is not less than one year from the date on which the notice is given.

Part XI – Option to Repeal Alternative Consistent Legislation and Pass Initial Legislation

27. (1) The Parliament of any State or Territory which in the first instance has not passed the Co-operative Legislation but which has passed Alternative Consistent Legislation may repeal its existing Alternative Consistent Legislation at any time by submitting to its Parliament Application of Laws Legislation which has been unanimously approved by a resolution of the MCCA repealing the Alternative Consistent Legislation and complementing, adopting or applying the Initial Legislation (as amended) in its respective State or Territory.

(2) The clauses of this Agreement relating to the Parties to this Agreement which have passed the Co-operative Legislation, will thereafter apply to a State or Territory referred to in clause 27(1).

IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the parties hereto respectively at the date and year first above written.

SIGNED for and on behalf of the
STATE OF NEW SOUTH WALES
by

SIGNED for and on behalf of the
STATE OF VICTORIA
by

SIGNED for and on behalf of the
STATE OF QUEENSLAND
by

SIGNED for and on behalf of the
STATE OF SOUTH AUSTRALIA
by

SIGNED for and on behalf of the
STATE OF NEW SOUTH WALES
by

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STATE OF WESTERN AUSTRALIA
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STATE OF TASMANIA
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NORTHERN TERRITORY OF AUSTRALIA
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SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
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