



AUSTRALIAN SETTLEMENTS LIMITED

ABN 14 087 822 491

BY-LAWS

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Document Release Information

Version	Amendment	Date	Comments
3	3	06.08.2003	Current version as at 31.07.2007
4	0	02.08.2007	Amended to comply with Outsourcing Requirements
5	0	11.05.2009	Prudential amendments to minimise cross-collateralisation
6	0	17-07-2011	Initial Review
6	1	01-09-2011	Review and formal Board approval

AUSTRALIAN SETTLEMENTS LIMITED

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BY-LAWS OF AUSTRALIAN SETTLEMENTS LIMITED

1 PART 1 - PRELIMINARY

Definitions

1.1 The following words have these meanings in these By-laws unless the contrary intention appears.

“**APRA**” means the Australian Prudential Regulation Authority.

“**ASL**” means Australian Settlements Limited (ABN 14 087 822 491).

“**Board**” means the Board of Directors of ASL.

“**BECS**” means the Bulk Electronic Clearing System (“CS2”) established and operated by Australian Payments Clearing Association Limited (ABN 12 055 136 519).

“**By-laws**” means these By-laws for the use and operation of, or participation by System Participants in, the Settlement System.

“**Capital**” means the capital of ASL to be provided from time to time by System Participants, required to be provided to ensure ASL meets its obligations as an authorised deposit-taking institution authorised under the Banking Act 1959 (Cwlth).

“**CECS**” means the Consumer Electronic Clearing System (“CS3”) established and operated by Australian Payments Clearing Association Limited (ABN 12 055 136 519).

“**Clearing Systems**” mean NES, BECS, CECS, HVCS and any Other Systems.

“**Commonwealth Inscribed Stock**” means Commonwealth Inscribed Stock, as defined in regulation 1.1 of the RITS regulations or any regulation in substitution thereof.

“**Constitution**” means the Constitution from time to time of ASL.

“**Corporations Act**” means the Corporations Act 2001 (Cwlth).

“**Dispute**” means a dispute or difference between:

- (a) ASL and any one or more System Participants; or
- (b) two or more System Participants,

arising out of, or in any way connected with, the Constitution (insofar as they relate to the operation or management of the Settlement System), these By-laws or the Settlement Manual.

“**ES Funds**” means funds that the Reserve Bank of Australia will accept as funds for crediting to an Exchange Settlement Account.

“**Exchange Settlement Account**” means an account so entitled opened and maintained by ASL with the Reserve Bank of Australia.

“Funding Amounts” means the aggregate amounts to be provided by a System Participant in ES Funds on any day (i) to meet its settlement obligations for that day under the Settlement System; and (ii) otherwise required to be provided by a System Participant in accordance with the Settlement Manual.

“FTS Operator” means a funds transfer system body corporate which facilitates the exchange of Items and settlement of payment obligations between System Participants and other persons using the services of that operator.

“HVCS” means the High Value Clearing System (“**CS4**”) established and operated by Australian Payments Clearing Association Limited (ABN 12 055 136 519), but only to the extent that CS4 is operating on a real time gross settlement basis.

“Insolvency Event” means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a System Participant be wound up;
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a System Participant or one of them is appointed, whether or not under an order;
- (c) a meeting is convened or a resolution is passed to appoint an official manager in respect of a System Participant;
- (d) a System Participant enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a System Participant resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so;
- (f) a System Participant is or states that it is unable to pay its debts when they fall due;
- (g) a System Participant is, or makes a statement from which it may be reasonably deduced that the System Participant is, the subject of an event described in section 459C(2) or section 585 of the Corporations Act or any corresponding legislation;
- (h) a System Participant takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a System Participant;
- (i) APRA or another body responsible for the prudential supervision of a System Participant assumes management and control of that System Participant; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“Items” mean any payment instructions by means of which value passes between two parties, which payment instructions are the subject of regulations governing the operations of the Clearing Systems.

“Mandated Prudential Funds” means the primary portion of pre-funding provided by a System Participant to ASL in such manner and amount as is determined in accordance with the Mandated Prudential Funds Formula which is based on the estimated amount required to cover that System Participant’s potential settlement obligations under the Settlement System.

“NES” means the centralised national electronic system currently operated by Cashcard Australia Limited (ABN 74 002 405 754) for the transmission of and settlement of payment instructions between System Participants and other participants in that system, or any replacement system from time to time.

“Other System” means any clearing system, other than NES, BECS, CECS and HVCS, and includes bilateral and multilateral arrangements involving System Participants, in respect of which ASL provides settlement functions on behalf of System Participants pursuant to the Settlement System.

“Processing Bureau” means Cashcard Australia Limited, or such other person appointed by ASL pursuant to its powers of delegation to assist ASL in operating the Settlement System.

“RITS” means the Reserve Bank Information and Transfer System maintained and operated by the Reserve Bank of Australia.

“Security Interest” means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

“Settlement Manual” means the Settlement Manual published by ASL from time to time under By-law 6.

“Settlement Services” means the settlement services provided by ASL to System Participants in accordance with these By-laws and the Settlement Manual.

“Settlement System” means the system established and operated under these By-laws and the Settlement Manual by means of which ASL settles the settlement obligations of System Participants which arise as a result of Items being exchanged under the Clearing Systems.

“Switch Operators” means any person which transmits or receives information in connection with Items on behalf of a System Participant to or from ASL or at ASL’s direction and whether or not via the Processing Bureau and, without limitation, may include the Processing Bureau.

“Suspension Event” means one of the events described in By-law 4.8.

“System Participant” means a System Participant as defined in the Constitution. (*“means a Building Society or Other Institution which uses and participates in the Settlement System and has agreed to comply with the Settlement System By-Laws”*)

“Voluntary Excess Funds” in respect of a System Participant, means funds additional to Mandated Prudential Funds, and Capital, placed with ASL and retained by ASL on behalf of that System Participant.

1.2 In these By-laws:

- (a) words importing any gender include the other gender;
- (b) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the singular includes the plural and vice versa; and
- (d) a reference to a statute, code or the Corporations Act (or to a provision of a statute, code or the Corporations Act) means the statute, the code, the Corporations Act or the provision as modified or amended and in operation for the time being, or any statute, code or provision enacted in lieu thereof and includes any regulation or rule for the time being in force under the statute, the code, the Corporations Act or the provision.

1.3 These By-laws have been adopted by the Board and take effect from the date specified by the Board.

1.4 Words defined in the Constitution have, unless the contrary intention appears, the same meaning in these By-laws.

1.5 References to “Articles” are references to Articles of the Constitution.

1.6 Headings are inserted for convenience and do not affect the interpretation of these By-laws.

Inconsistency with Constitution

1.7 If a provision of these By-laws or the Settlement Manual is inconsistent with a provision of the Constitution, the provision of the Constitution prevails.

Governing Law

1.8 These By-laws are to be interpreted in accordance with the same laws which govern the interpretation of the Constitution.

1.9 A reference in Part 7 to:

- (a) a determination by a person includes a decision by that person;
- (b) proceedings includes actions, suits and proceedings at law, in equity or otherwise.

2 PART 2 - OBJECTS/PURPOSE

Purpose

2.1 The primary object of these By-laws is to specify the rules and regulations regulating the use and operation of and participation by System Participants in the Settlement System.

By-laws

- 2.2 The Settlement System is established by these By-laws for the benefit of all System Participants who, by and in consideration of becoming System Participants, acknowledge that they are bound to comply with the Constitution, these By-laws and the Settlement Manual and to fulfil and perform any obligation and duty imposed on them by and pursuant to the Constitution, these By-laws and the Settlement Manual.
- 2.3 These By-laws have the effect of a contract under seal:
- (a) between ASL and each System Participant; and
 - (b) between the System Participants.

The contractual relationship between ASL and the System Participants, and between the System Participants forms part of an ongoing business relationship between such parties in relation to the conduct of the Settlement System.

System Participants as Principals

- 2.4 In incurring rights and obligations under these By-laws and the Settlement Manual, each System Participant acts on the basis that it assumes those rights and incurs those obligations as a principal, notwithstanding any other fact, matter or circumstance (including, without limitation, any actual or constructive notice of any agency relationship entered into by a System Participant).
- 2.5 No person other than the System Participant which assumes rights or incurs obligations under these By-laws and the Settlement Manual (including any person asserting rights as a principal on whose behalf such System Participant acts) may enforce those rights or assume those obligations. This provision does not restrict ASL from enforcing these By-laws and Settlement Manual or limit By-law 2.9.

Assignment and Transfer

- 2.6 The rights and obligations of each System Participant under the Constitution, these By-laws and the Settlement Manual are incapable of being assigned (whether at law, in equity or otherwise), charged, transferred or the subject of any trust or other fiduciary obligation which may affect or abrogate the personal liability of that System Participant. No action which purports to do any of the foregoing shall affect in any manner the rights and obligations of a System Participant under the Constitution, these By-laws and the Settlement Manual.

Insolvency

- 2.7 A System Participant must notify ASL immediately upon becoming aware of any Insolvency Event in respect of itself. Upon receiving any notification under this By-law 2.7, ASL must promptly notify APRA and may notify the Reserve Bank of Australia, all other System Participants, all relevant Switch Operators, the Processing Bureau and any other participants in the relevant Clearing Systems.
- 2.8 The occurrence of an Insolvency Event in respect of a System Participant constitutes a breach of these By-laws by that System Participant.

Indemnity

- 2.9 Each System Participant indemnifies each other System Participant against any liabilities or expenses reasonably incurred or sustained by that other System Participant as a result of any breach of the Constitution, these By-laws or the Settlement Manual by the first mentioned System Participant.

3 PART 3 - EXCLUSION OF LIABILITY

Representations and Warranties

- 3.1 Each System Participant represents, warrants and acknowledges to ASL and each other System Participant that:
- (a) it has not relied on any representation made by ASL or any other System Participant to induce it to become a System Participant;
 - (b) it will make (without reliance on ASL or any other System Participant and based on documents and information which it considers appropriate) its own independent investigation of the financial condition and affairs of ASL and, if it considers it appropriate to do so, each other System Participant;
 - (c) it has made its own appraisal of the qualifications to be satisfied in order for a person to become a System Participant;
 - (d) it has made (without reliance on or inducement to or from ASL or any other System Participant) its own assessment and approval of the Constitution, these By-laws and the Settlement Manual (as at the date upon which it became a System Participant) as being appropriate for the conduct and settlement of exchanges of Items exchanged in the Clearing Systems and acknowledges that the Constitution, By-laws and the Settlement Manual are subject to amendment from time to time without the need for approval by the System Participant;
 - (e) it has the capacity to enter into and observe and perform its obligations under the Constitution, these By-laws and the Settlement Manual, has obtained all necessary authorisations to permit it to do so and it satisfies the criteria for membership specified in By-law 4.1;
 - (f) it is aware of the risk that the Mandated Prudential Funds and Capital received by ASL on behalf of a System Participant from the settlement of exchanges in connection with the Clearing Systems, while such credit amount is in ASL's Exchange Settlement Account, may be applied to meet settlement obligations of other System Participants which default in meeting their settlement obligations in accordance with these By-laws;
 - (g) if ASL is required to pay funds or has funds taken from its Exchange Settlement Account as a result of any failure of one or more other System Participants to meet its or their settlement obligations ASL may not be able to repay money deposited with ASL or otherwise owed by ASL to the System Participant and the System Participant's right to recover money owed by ASL is limited to ASL's ability to pay the System Participant having regard to ASL's obligations to its other creditors and in the event of any shortfall the System Participant will have no claim against ASL, its officers or employees; and

- (h) except as expressly provided in these By-laws, neither ASL nor any person representing, or acting on behalf of, ASL is acting as a fiduciary or agent for, or an adviser to, any System Participant.

Disclaimers

- 3.2 Each System Participant acknowledges that no officer, employee or agent of ASL has any authority to make any representations or give any warranties in relation to the liability of ASL with respect to the operation of the Settlement System which are inconsistent with the Constitution, the By-laws or the Settlement Manual.

Exclusions

- 3.3 Without limiting By-law 3.1 or any other provision of these By-laws, ASL will not be liable for any loss to any person or damage to persons or property, whether such loss or damage is direct or consequential (including but not limited to loss of profits) or whether such loss arises from the negligence of ASL, its officers, employees or agents, howsoever arising out of:
 - (a) any act or omission by any System Participant or any other person other than ASL, its officers, employees or agents (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of these By-laws, the Settlement Manual or the terms of any other document relating to the Settlement System, any Insolvency Event, any failure to settle any transaction, any fraud or any forgery);
 - (b) any act or omission by the Processing Bureau, a State FTS Operator or a Switch Operator (including without limitation any errors or delays, any breach of warranty or undertaking or representation, any breach of warranty or undertaking of representation, any breach of these By-laws, the Settlement Manual or the terms of any other document relating to the Settlement System, any Insolvency Event, any failure to settle any transaction, any fraud or any forgery);
 - (c) any act or omission done by, or any refusal to do any act by, ASL, its officers, employees or agents in good faith or in reliance on any act, conduct or consent of any other person or on any instructions, information or document provided to ASL, its officers, employees or agents by any other person; including without limitation APRA or the Reserve Bank of Australia.
 - (d) any fraud or forgery on the part of any officer, employee or agent of ASL outside the scope of his or her employment with ASL, except to the extent to which ASL would have been responsible at common law for such fraud or forgery;
 - (e) the failure of ASL, its officers, employees or agents to receive any instructions, information or document from any other person;
 - (f) the terms of any instructions, information or document given to ASL, its officers, employees or agents by any other person;
 - (g) any error or omission in any document issued by or other information provided by ASL;
 - (h) any technological failure of any sort (including without limitation any telephone, computer or electrical failure);

- (i) any unauthorised access to, or participation in, the Settlement System by any person, other than an officer, employee or agent of ASL;
- (j) any contractual arrangements between any System Participant and another person;
- (k) any change in the status, financial condition, affairs or creditworthiness of a System Participant or another person;
- (l) any loss, destruction or corruption of information provided to or created by ASL, its officers, employees or agents or the release of any information to any person not entitled to it by ASL, its officers, employees or agent;
- (m) any occurrence which is beyond the reasonable prevention or control of ASL, its officers, employees or agents, including, without limitation, any act of God, war (whether declared or not), sabotage, riot, insurrection, civil commotion, act of terrorism, national emergency, martial law, fire, flood, earthquake, explosion, power failure or shortage (other than a failure or shortage due to the wilful misconduct of ASL, its officers, employees or agents), strike, disputes or lockout or any expropriation, restraint, restriction, prohibition, intervention, law or regulation; or
- (n) any action undertaken in good faith by ASL, its officers or agents pursuant to any of the provisions of this agreement including without limitation any action pursuant to By-laws 4.8, 4.9, 4.12 or 5.13.

Undertaking

- 3.4 If a System Participant has its membership suspended or terminated pursuant to By-laws 4.8, 5.13 or 4.10, it may not make any claim against the Processing Bureau in respect of that occurrence or in respect of any consequences of that occurrence.

4 PART 4 - MEMBERSHIP

Criteria

- 4.1 To be a System Participant, a person must:
- (a) be eligible to be a System Participant under the Constitution;
 - (b) be able to comply with any applicable laws, the Constitution, these By-laws and the Settlement Manual as they apply to that person;
 - (c) not adversely affect the integrity of the operation of the Settlement System or otherwise introduce a significant new risk into the Settlement System by becoming a System Participant;
 - (d) be able to comply with the technical and operational standards contained in these By-laws and the Settlement Manual;
 - (e) not impair the overall efficiency of the Settlement Systems by becoming a System Participant;

- (f) if joining as a System Participant, provide the Capital and Mandated Prudential Funds, and agree to do so in such manner as may be approved by the Board; and
- (g) agree to pay all fees, costs, charges and expenses which may be levied on, or reimbursed by, System Participants in accordance with these By-laws and the Settlement Manual.

Application

- 4.2 Applications to be a System Participant must be in writing addressed to ASL in the form from time to time required by ASL. Applicants must:
- (a) comply with all the conditions of application specified in these By-laws;
 - (b) provide sufficient information to demonstrate that the applicant satisfies the requirements contained in By-law 4.1; and
 - (c) supply such other information as the Board may reasonably require.
- 4.3 All applications to be a System Participant received by ASL must be promptly considered by the Board. The Board may, but need not, accept for membership an applicant which complies with the requirements for membership specified in the Constitution and these By-laws.
- 4.4 A person who has applied to be a System Participant but has not been informed by ASL of the result of its application may withdraw the application at any time.
- 4.5 If an application to be a System Participant is successful, ASL must promptly notify:
- (a) the applicant; and
 - (b) all System Participants.
- 4.6 Subject to any constraints of a Clearing System, an applicant accepted to be a System Participant is entitled to participate in the Settlement System from the date determined by ASL which will be no longer than two months after the date ASL gives notice to the applicant pursuant to By-law 4.5.
- 4.7 If an applicant's application does not comply with these By-laws, ASL must notify the applicant. Any such applicant is entitled:
- (a) within 3 months of notice from ASL, to request ASL to review that decision; or
 - (b) at any time, to lodge a fresh application for membership in accordance with these By-laws.

Suspension

- 4.8 ASL may suspend the membership of a System Participant with immediate effect and without prior notice, for a specified or indefinite period of time in the following circumstances (each a "Suspension Event"):
- (a) the System Participant is subject to prudential supervision and the relevant supervisor requests such suspension;

- (b) by agreement with the System Participant;
- (c) the System Participant no longer satisfies any requirement for membership set out in By-law 4.1;
- (d) an Insolvency Event occurs or ASL believes that an Insolvency Event has occurred in respect of that System Participant; or
- (e) the System Participant breaches its obligations under the Constitution, these By-laws or the Settlement Manual (other than a breach of the type described in By-law 5.13) and fails to rectify the breach or provide a satisfactory explanation to the Board upon a request from ASL to rectify the breach or provide such an explanation within the period of time specified by ASL in that request.

A System Participant may also be automatically and immediately suspended in accordance with By-law 5.13.

Effect of Suspension

- 4.9 If a System Participant has its membership suspended under By-laws 4.8 or 5.13:
- (a) it is not entitled to have its Items cleared or settled by ASL in accordance with the Settlement System;
 - (b) ASL may issue any notice, and take any other steps available to it in connection with any Clearing System and notify that Clearing System, any relevant Switch Operators and the Processing Bureau, so that ASL ceases to collect Items or be responsible for the settlement of Items drawn by or addressed to that System Participant; and
 - (c) otherwise its rights and obligations under these By-laws are unaffected.

ASL may recover any costs and expenses it occurs in taking any of the above steps from the suspended System Participant.

Termination

- 4.10 A System Participant will cease to be a System Participant if ASL redeems that System Participant's System Participation Share pursuant to Article 2.23.

Resignation

- 4.11 A System Participant may, by notice in writing to ASL, resign as a System Participant with effect from a date specified in the notice being a date not less than 1 month and not more than 6 months after the service of the notice. The notice is irrevocable.

A System Participant may not resign except by giving notice in accordance with this By-law 4.11.

- 4.12 Any resignation or termination of the membership of a System Participant will not affect any right or liability arising under the Constitution, these By-laws or the Settlement Manual prior to the time such resignation or termination takes effect or arising in respect of any act, matter or thing occurring prior to that time. A System Participant who resigns pursuant to By-law 4.11 or whose membership is terminated pursuant to Article 2.23 and

By-law 4.10 will continue to be bound by the Constitution and these By-laws and the Settlement Manual in respect of:

- (a) any act, matter or thing occurring prior to the time such resignation or termination takes effect or as a result of such resignation or termination;
- (b) any act, matter or thing for which ASL becomes liable for at any time on behalf of that System Participant, in respect of which ASL has taken all appropriate steps under those By-laws and the rules and regulations of the relevant Clearing Systems, including, without limitation, notification of ASL ceasing to settle Items on that System Participant's behalf; and
- (c) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, System Participants in accordance with these By-laws in respect of periods which commence prior to the time such resignation or termination takes effect or which relate to any such act, matter or thing.

For the avoidance of doubt, if any act, matter or thing occurring prior to the time such resignation or termination takes effect results in subsequent liabilities of the resigning or terminating System Participant arising under the Settlement System, the resigning or terminating System Participant will continue to be responsible for such liabilities.

Effect of Termination or Resignation

- 4.13 Subject to By-law 4.16 and any rights of set-off, counterclaim or combination which are available at law, upon any resignation or termination of the membership of a System Participant becoming effective:
- (a) the resigning or terminating System Participant must immediately pay all sums of money (if any) owed by it to ASL or to any other System Participant in respect of obligations arising from exchanges or otherwise under these By-laws; and
 - (b) all sums of money (if any) owed to it by ASL or by any other System Participant in respect of all such exchanges must be paid by ASL or the other System Participant to the resigning or terminating System Participant.

Any sums of money due by ASL to the resigning or terminating System Participant may be retained pending ASL satisfying itself that there are no pending obligations arising under paragraph (a) by the resigning or terminating System Participant to ASL. The records maintained by ASL shall be prima facie evidence of the sum or sums owing by or to such System Participant.

- 4.14 If a System Participant resigns or has its membership terminated:
- (a) it immediately ceases to be entitled to have its Items cleared or settled by ASL in accordance with the Settlement System; and
 - (b) ASL may issue any notice and take any steps available to it in connection with any Clearing System and notify that Clearing System, any relevant Switch Operators and the Processing Bureau, so that ASL ceases to collect Items or be responsible for the Settlement of Items drawn on or addressed to that System Participant.

- 4.15 A System Participant which resigns or whose membership is terminated is not entitled to be repaid all or part of any operating fee which has been paid by it.
- 4.16 There may not be any set-off by the System Participant which resigns or whose membership is terminated against the Mandated Prudential Funds it provided to ASL. ASL will only be obliged to repay Mandated Prudential Funds provided by the System Participant which resigns or whose membership is terminated or so much of it as is due to that System Participant when:
- (a) all obligations due by that System Participant to ASL have been paid; and
 - (b) ASL is reasonably able to do so after it has obtained approval of the Reserve Bank of Australia for the release of Mandated Prudential Funds provided by that System Participant, but ASL is under no obligation to take steps described in this paragraph.

5 PART 5 - SETTLEMENT FUNCTION

- 5.1 ASL will co-ordinate and determine each System Participant's Settlement obligations (if any) in connection with Items exchanged through:
- (a) NES;
 - (b) BECS;
 - (c) CECS;
 - (d) HVCS; and
 - (e) Other Systems,

for which ASL and the relevant System Participant have agreed that ASL is to be responsible for the settlement of in accordance with these By-laws and the Settlement Manual and advise each System Participant of its settlement obligations. ASL is appointed as agent of the System Participant for this purpose. While a System Participant remains a System Participant it is not entitled, without the consent of ASL, to appoint any person (other than its officers or employees) to settle or arrange the settlement of obligations of the System Participant in relation to any of the Items exchanged through Clearing Systems in respect of which ASL is providing settlement services for the System Participant.

Settlement of Settlement obligations

- 5.2 Subject to By-laws 5.1 and 5.9 ASL will settle:
- (a) the aggregate of all System Participants' settlement obligations in connection with NES;
 - (b) the aggregate of all System Participant's settlement obligations in connection with BECS;

- (c) the aggregate of all System Participants' settlement obligations in connection with CECS;
- (d) all System Participants' settlement obligations in connection with HVCS; and
- (e) the aggregate of all System Participants' settlement obligations in connection with the Other Systems,

at the times and in the manner required under any rules, regulations, procedures and by-laws applicable to the relevant Clearing System and as set out in these By-laws and the Settlement Manual.

Join Clearing Systems

5.3 ASL will join and maintain its membership of:

- (a) BECS;
- (b) CECS;
- (c) HVCS; and
- (d) the Other Systems,

in the membership capacity to which it qualifies appropriate for it to carry out its obligations under By-law 5.2.

Monitoring

5.4 ASL will implement systems to monitor the settlement obligations of each System Participant under the Clearing Systems and ASL's overall settlement obligations under the Clearing Systems at any time it considers appropriate to manage risks associated with those settlement obligations effectively.

In order to assist ASL monitor these matters, each System Participant must:

- (a) ensure that the liquidity management strategy required to be prepared under APRA's Prudential Statement APS 210 (or any equivalent requirement imposed by another body responsible for the prudential supervision of the System Participant) specifically addresses the System Participant's settlement obligations for each Clearing System and its ability to provide amounts to ASL in a timely manner in accordance with the Settlement Manual including, in particular, the System Participant's responsibilities under By-laws 5.9 and 5.10;
- (b) upon request, provide a copy or an extract of its liquidity management strategy to ASL; and
- (c) unless prohibited by law from doing so, inform ASL at the same time as it informs APRA (or another body responsible for the prudential supervision of the System Participant) of any concerns it has about its current or future liquidity and its plans to address these concerns.

Reporting to Regulator

- 5.5 ASL may, at any time, report any System Participant's settlement obligations or any information relating to the Settlement System to APRA, the Reserve Bank of Australia or any other body responsible for the prudential supervision of the System Participant.

Maintain Exchange Settlement Account and RITS Account

- 5.6 To effect settlement of System Participants' settlement obligations in connection with the Clearing Systems, ASL will open and maintain an Exchange Settlement Account at the Reserve Bank of Australia.
- 5.7 ASL will open and maintain a RITS Account.
- 5.8 ASL will maintain and do all things necessary to maintain its registration as an authorised deposit-taking institution with APRA.

Responsibility

- 5.9 Notwithstanding that ASL is directly responsible to other members of a Clearing System to settle the System Participants' settlement obligations in connection with that Clearing System, as between ASL and each System Participant and as between System Participants, each System Participant must settle its settlement obligations for each Clearing System in a timely manner in accordance with these By-laws and the Settlement Manual.

Provide Funding Amounts, Mandated Prudential Funds, and Capital

- 5.10 To enable ASL to settle its obligations in each Clearing System and for each System Participant to meet its settlement obligation for each Clearing System, each System Participant must:
- (a) provide Funding Amounts;
 - (b) provide Mandated Prudential Funds; and
 - (c) provide Capital,

in the manner and at the times specified in the Settlement Manual. The Funding Amounts, Mandated Prudential Funds and Capital provided by a System Participant must be free of any Security Interest other than in favour of ASL.

Each System Participant acknowledges that ASL is entitled, but not required, to deduct from any moneys provided by, or held for, the System Participant (including, without limitation, any Voluntary Excess Funds of the relevant System Participant) an amount up to the aggregate amount of all payments which may from time to time become payable by the System Participant to ASL pursuant to the Constitution, these By-laws or the Settlement Manual.

ASL will not be obliged to repay Mandated Prudential Funds to a System Participant until that System Participant resigns or has its membership terminated, and then only after that System Participant has satisfied all of its obligations under the Constitution, these By-laws and the Settlement Manual and only in accordance with By-law 4.16.

Capital will be returned to a System Participant in accordance with the Constitution.

- 5.11 If, on any day, a System Participant fails to provide by the time required for Settlement all or any part of its Funding Amounts and, after the application of the Mandated Prudential Funds and Voluntary Excess Funds, provided by that System Participant, there is a shortfall in the aggregate amount to be provided by the System Participant to (i) meet its settlement obligations for that day by the required time under the Settlement System, and (ii) otherwise required to be provided by the System Participant in accordance with these By-laws and the Settlement Manual, ASL may use other System Participant's available Mandated Prudential Funds, up to the amount of the shortfall being to meet System Participant's settlement obligations and the amount so paid will be a loan from ASL to the System Participant, repayable immediately and until repaid, the system participant must pay interest on those funds loaned to it at an interest rate determined by ASL from time to time.

Application of Funds

- 5.12 Under these By-laws the following steps to settle the settlement obligations of each System Participant will occur each day until the amounts realised by taking those steps satisfies that System Participant's settlement obligation for that day:
- (a) First, apply any credits due to that System participant held in the ASL Exchange Settlement Account, including any Funding Amounts and Mandated Prudential Funds
 - (b) Second, apply any Voluntary Excess Funds held by ASL on behalf of that System Participant.
 - (c) Third, apply any available Mandated Prudential Funds of other System Participants in the form of a loan by ASL.
 - (d) Fourth, at the discretion of the Board, and with the express written consent of other relevant System Participants, apply other funds held by ASL.

Failure to settle

- 5.13 If a System Participant fails to meet its obligations:
- (a) to provide any Funding Amounts in the manner and by the time specified in these By-laws and the Settlement Manual and its settlement obligations for that day are not satisfied by the application of funds from other sources contemplated by By-law 5.12; or
 - (b) to provide any Mandated Prudential Funds in the manner and by the times specified in these By-laws and the Settlement Manual; or

ASL may:

- (c) cease to settle on behalf of that System Participant and take all steps required under relevant Clearing Systems, so that ASL ceases to collect Items or be responsible for the settlement of Items drawn on or addressed to that System Participant;
- (d) instruct the Processing Bureau to disconnect that System Participant from any system operated by the Processing Bureau to ensure no further Items addressed to

or received from that System Participant under the Clearing Systems are exchanged; and

- (e) notify any relevant Switch Operators that ASL has ceased to settle on behalf of that System Participant and instruct the Switch Operator to cease any processing of that System Participants' Items,

and each System Participant expressly authorises ASL to give the notices, issue the instructions and take the other steps described in this By-law and that System Participant will automatically and immediately have its membership as a System Participant suspended.

Indemnification for Failure to Make Payment

- 5.14 If a System Participant fails to pay or is late in paying any amounts required to be paid pursuant to the Constitution, these By-laws or the Settlement Manual (a “**Defaulting System Participant**”):
- (a) the Defaulting System Participant must indemnify ASL and each other System Participant against all loss, costs and expenses which ASL and each other System Participant may sustain or incur arising from the non-payment or late payments;
 - (b) funds of ASL or other System Participants which were applied to meet the payment due by the Defaulting System Participant constitute a loan (“**Loan**”) to the Defaulting System Participant;
 - (c) the Defaulting System Participant must pay interest on the Loan to ASL, at the rate determined by ASL from time to time, from the time the payment was due until the time of actual payment (including interest due on amounts due and paid on the same day); and
 - (d) the Defaulting System Participant must promptly repay the Loan without the necessity for any demand being made by ASL or any other System Participant.

Delegation

- 5.15 In discharging its responsibilities under these By-laws and the Settlement Manual, ASL may, subject to By-law 10.6, delegate its powers, duties and authorities and functions, apart from its obligation to maintain an Exchange Settlement Account, to one or more other persons as it sees fit.
- 5.16 Pursuant to By-law 5.15 and subject to By-law 10.6, ASL may appoint:
- (a) the Processing Bureau to:
 - (i) assist ASL to determine ASL's settlement obligations in each Clearing System and ASL's aggregate settlement obligation;
 - (ii) assist ASL to determine each System Participant's settlement obligation in each Clearing System and each System Participant's aggregate settlement obligation; and
 - (b) the Processing bureau to implement the systems necessary to enable monitoring of:

- (i) each System Participant's settlement obligations; and
 - (ii) ASL's settlement obligations,
- and to carry out that monitoring when those systems are operational; and
- (c) the Processing Bureau to administer any clearing obligations for which ASL becomes responsible for on behalf of a System Participant or on its own behalf by ASL being a participant in the Clearing Systems.

Not Cause Breach

- 5.17 Each System Participant undertakes that it will duly observe and perform and will not do or omit to be done any act which may cause ASL to breach any rules, regulations or by-laws of any of the Clearing Systems or RITS or any applicable legislation.

6 PART 6 - SETTLEMENT MANUAL

- 6.1 The conduct of the Settlement System must be undertaken in accordance with the practices, procedures and specifications determined by ASL from time to time and published in the Settlement Manual. Those practices, procedures and specifications may relate to any aspect of the Settlement System.
- 6.2 ASL will, where appropriate, review and make amendments to the Settlement Manual including where necessary to reflect current market practice and requirements or to take account of any change to Clearing System requirements.
- 6.3 ASL may amend the Settlement Manual at any time and ASL must notify each System Participant of any amendment and the date from which that variation applies prior to such amendment taking effect.
- 6.4 For the avoidance of doubt, amendments to the Settlement Manual may supplement or vary the provisions of By-laws 5.1 to 5.17 inclusive in any way which ASL believes is necessary or desirable to ensure that each System Participant can satisfy its settlement obligations for each Clearing System and provide amounts to ASL in a timely manner.
- 6.5 Subject to By-law 1.7, if a provision of the Settlement Manual is inconsistent with a provision of these By-laws, the Board is to determine which provision prevails. The Board may delegate its powers under this By-law 6.5 to one or more other persons as it sees fit.

7 PART 7 - BREACHES OF BY-LAWS AND DISPUTES

Resolution of Disputes

- 7.1 In the event of a Dispute, the parties to the Dispute will first endeavour to resolve the matter by way of good faith negotiations between them. If the dispute can not be resolved within a reasonable period of time, either party to the Dispute may refer it to the Australian Commercial Disputes Centre (the Arbiter). The Dispute is to be resolved or determined in accordance with the procedures required by the Arbiter. The findings of the Arbiter, including as to costs, will be binding on the parties.

Costs

- 7.2 The System Participant party to a Dispute which is referred to the Arbiter pursuant to By-law 7.1 must pay to ASL (in such proportions as the Arbiter determines as reasonable and appropriate in all the circumstances) any costs and expenses incurred by ASL in relation to that referral (including, without limitation, all costs and expenses (on a solicitor and own client basis) incurred in obtaining legal, financial, actuarial or accountancy advice and administrative costs reasonably incurred by ASL).

Commencement of Proceedings

- 7.3 If a System Participant (in this By-law, the “**Defendant System Participant**”) fails or refuses to give effect to a determination of the Arbiter, the Board may resolve that proceedings be commenced and prosecuted against the Defendant System Participant either:
- (a) by ASL in its own right; or
 - (b) by ASL on behalf of one or more System Participants which were System Participants at the date of issue of the Arbiter’s determination (other than the Defendant System Participant).
- 7.4 If the Board resolves that proceedings be commenced and prosecuted against the Defendant System Participant, then:
- (c) if it is necessary or, in the opinion of ASL, desirable for those proceedings to be commenced and prosecuted by ASL on behalf of one or more System Participants which were System Participants at the date of issue of the Arbiter’s determination (other than the Defendant System Participant), then each such System Participant irrevocably authorised ASL to commence and prosecute those proceedings on its behalf; and
 - (d) no System Participant (not being the Defendant System Participant) may commence or prosecute any proceedings in relation to the failure or refusal of the Defendant System Participant to give effect to the determination of the Arbiter.
- 7.5 If ASL commences and prosecutes proceedings on behalf of one or more System Participants in accordance with By-law 7.3(b), each such System Participant must sign all requisite consents and other instruments and do all things necessary to enable ASL to commence and prosecute those proceedings on its behalf and in default will be deemed to have appointed ASL as its attorney for that purpose.

Costs

- 7.6 All:
- (a) costs (including costs as between solicitor and own client) and disbursements incurred by ASL in relation to any proceedings commenced and prosecuted in accordance with By-law 7.3;
 - (b) administrative costs reasonably incurred by ASL in relation to any such proceedings;

- (c) costs (including disbursements) and damages which may be awarded against ASL in relation to any such proceedings (or be payable by ASL as the result of any settlement of any such proceedings); and
- (d) liabilities and losses arising from any such proceedings which are suffered or incurred by ASL,

are to be treated as costs and expenses of operating, or incurred in connection with, the Settlement System for the purposes of By-law 8.

Distribution of Recoveries

- 7.7 Any amount recovered by ASL from a Defendant System Participant as a consequence of the commencement and prosecution of any proceedings in accordance with By-law 7.3 (and whether received pursuant to a judgment or decree or whether by way of compromise or settlement or otherwise) must be paid to ASL to be dealt with by ASL as follows:
- (a) to the extent (if any) that the amount represents other moneys which are, or are alleged to be, payable to ASL under these By-laws of the Settlement Manual, the moneys will become the property of ASL and will be applied by ASL for such purposes as the moneys would have been applied if the moneys had been paid to ASL by the Defendant System Participant in the ordinary course and without the necessity of instituting proceedings for the recovery of the moneys; and
 - (b) any other amount will be applied by ASL towards the payment of the costs and expenses referred to in By-law 8.7.8

Notwithstanding the existence of a Dispute, ASL and each System Participant must continue to perform its obligations under these By-laws. The existence of a Dispute does not, however, prevent ASL from exercising its rights to suspend the membership of a System Participant pursuant to By-laws 4.8 (a), (b), (c) or (d) or 5.13 in accordance with the terms of those By-laws.

8 PART 8 - COSTS AND EXPENSES

- 8.1 Each System Participant must pay to ASL the charges in the amount determined by the board from time to time and calculated in the manner specified in the Settlement Manual.
- 8.2 ASL may deduct the periodic operating fee due by a System Participant from any funds due by ASL to that System Participant arising from ASL settling that System Participant's settlement obligations. ASL must advise any relevant System Participant of any deduction made under this By-law.
- 8.3 Each System Participant whose membership as a System Participant is suspended or terminated must pay to ASL all fees, costs and expenses incurred by ASL taking the steps which it may take under these By-laws upon such occurrence.
- 8.4 ASL may also deduct any fees notified to it by a Processing Bureau as being payable by a System Participant in respect of any transmission, processing, switch, clearing, settlement or other service provided by a Processing Bureau to that System Participant from any funds due by ASL to that System Participant arising from ASL settling that System Participant's settlement arising from ASL settling that System Participant's settlement obligations. ASL must cause any relevant System Participant to be advised of any deduction under this By-law.

9 PART 9 - NOTICES

- 9.1 A notice may be given by ASL to any System Participant or other person receiving notice under these By-laws either by:
- (a) serving it personally; or
 - (b) by sending it by post or facsimile transmission to the address supplied by that person to ASL for the giving of notices; or
 - (c) sending an electronic mail message through such system and in such manner as that person has agreed for the giving of notices.
- 9.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the second business day after the date of its posting.
- 9.3 Where a notice is sent by facsimile transmission, service of the notice is deemed to be effected by properly addressing the facsimile transmission and transmitting same and to have been served at the time of transmission, if that is prior to 5.00 p.m. in the place of receipt, or if after that time, on the business day following its despatch.
- 9.4 Where a notice is sent by electronic mail, the notice is deemed to be served on receipt by the sender of an electronic or other confirmation that the notice has been received by the addressee.

10 PART 10 - MISCELLANEOUS

Statistics

- 10.1 Each System Participant must at the request of ASL provide to ASL all reasonable information relating to that System Participant's costs, volumes of exchanges, values of exchanges and other matters relevant to the Settlement System.

Set-Off

- 10.2 Subject to By-law 4.16, nothing in these By-laws shall be construed so as to negate or exclude any right of set-off by ASL which may otherwise arise.

Amendment

- 10.3 The Board will review these By-Laws from time to time including where there is a material change in relevant circumstances. As a consequence of any review, the Board may amend these By-laws and ASL must notify each System Participant of any amendment to the By-laws at least 7 days prior to such amendment taking effect unless such amendment is due to legislative, regulatory or Clearing System requirements. Any amendment to these By-laws must contain an editorial note setting out the effective date of such amendment.

Representations and Warranties

- 10.4 ASL is entitled to assume the correctness of any representation or warranty made by a System Participant and is not required to conduct independent enquiries or to conduct searches of public registers to confirm the correctness of any representation or warranty.

Confidentiality

- 10.5 All information provided to ASL or a System Participant under these By-laws (or otherwise in connection with the Settlement System) by ASL or another System Participant is confidential to the recipient of that information, its employees, legal advisers, auditors and other consultants and may not be disclosed to any person except:
- (a) with the consent of the provider of that information (which consent is not to be unreasonably withheld);
 - (b) in accordance with these By-laws on a basis which does not identify the provider of the information;
 - (c) (in the case of statistics) on a basis which does not identify the provider of the information;
 - (d) if required by law or required by the Reserve Bank of Australia, APRA, any stock exchange, regulatory authority or any supervisory authority which is responsible for the prudential supervision of the recipient;
 - (e) if required by any person administering any of the Clearing Systems, to the extent that person is entitled to require the same under the rules and regulations of that Clearing System;
 - (f) in connection with legal proceedings relating to these By-laws, or the Settlement Manual;
 - (g) if the information is generally and publicly available; or
 - (h) to a Related Body Corporate of the recipient, provided the Related Body Corporation undertakes to observe the confidentiality obligations in this By-law.

10.6 Subcontractors

ASL may engage third party subcontractors, contractors or agents to assist in the satisfaction of any of its obligations under these By-laws provided that ASL shall continue to be liable under the terms of these By-laws as if ASL performed the obligation in its own right. ASL shall ensure that any third parties so engaged will be bound to implement any controls required by ASL, at all times maintain appropriate insurance and disaster recovery plans, and, where possible, permit APRA to access relevant information in relation to their performance under their agreement with ASL.

10.7 Auditing

ASL agrees to allow APRA's and any System Participant's auditors to conduct on-site visits at ASL's offices for the purpose of monitoring the performance of ASL and the adequacy of ASL's risk management systems. Any such visit shall be no more than once per year, on reasonable notice to ASL, during normal business hours with minimum disruption to ASL and any costs incurred by ASL in relation to any inspection shall be borne by the System Participant.

10.8 Insurance

ASL and each System Participant will, at all times, maintain insurances that the respective party deems prudent for the carrying on of its business and maintenance of its assets, and will produce evidence of such insurance, upon request.

10.9 Business Continuity Management

- (a) ASL will at all times have in place and, in the event of a material disruption to its business will implement, a Business Continuity Plan (“**BCP**”) which is intended to minimise the adverse impact of such a disruption on the Settlement Services.
- (b) As a minimum, the BCP will involve the maintenance of a contingency site containing equipment and telecommunications in order to provide continuity of service in the event that the primary and co-located back up systems and connections in ASL’s primary site are totally unavailable.
- (c) ASL will test its BCP regularly and not less than annually. Within 30 days of the relevant test results being made available (or such other period as in the circumstances may be reasonable) ASL will:
 - (i) provide each System Participant with an independent assurance that ASL’s BCP has been satisfactorily tested; and
 - (ii) provide a report as to any exception items identified in such testing, which ASL reasonably concludes may have a material adverse impact on the provision of the Settlement Services together with ASL’s plans to address those exception items.
- (d) ASL will, as soon as practical (to the extent permitted by law) advise each System Participant of any disruption affecting the provision of the Settlement Services which requires the implementation of its BCP.

10.10 Privacy

ASL and each System Participant certifies that it will comply with all applicable privacy and data protection laws, including but not limited to the Privacy Act 1988 (as amended) and the National Privacy Principles (or other approved code of conduct to which either party is bound).