

The Constitution of
FINANCIAL SERVICES COMPLAINTS LIMITED

CONTENTS

PART A		
I.	The Company	1
II.	Number of Directors	1
III.	Names of Directors	1
IV.	Quorum for Directors' Meetings	1
PART B		
1.	Interpretation	2
2.	Objects and Management of the Company	3
	Objects and Powers	3
	Management	4
	Participation	5
	Independent Review	6
3.	Shares	6
4.	Transfer and Transmission of Shares	7
5.	Distributions	7
6.	Meetings of Shareholders	7
	Annual Meeting	7
	Notice of Meetings	8
	Quorum	8
7.	Directors Duties	8
	Reliance on Information and Advice	9
8.	Self Interests Transactions	9
	Actions by Interested Directors	10
	Use of Company Information	10
	Disclosure	11
	Disclosure and Use of Information Generally	11
9.	Appointment and Removal of Directors	11
	Minimum number	11
	Appointment	11
	Vacation of Office	12
	Appointment and Removal of Directors by the Board	12
	Alternate Directors	13
10.	Directors Meetings	14
	Chairperson	14
	Notice of Meeting	14
	Method of Holding Meetings	14
	Quorum	15
	Voting	15
	Minutes	16
	Unanimous Resolution	16
	Acts of Directors	16
	Other Proceedings	16
11.	Remuneration and Other Benefits	16
12.	Indemnity and Insurance	17
13.	Method of Contracting	18
14.	Auditor	19

15.	Alteration of Constitution	19
16.	Accounts	19
17.	Annual Report	20
18.	Manner of Service	20
19.	Removal from the Register	21
20.	Registered Office	21
21.	Share Register	21
22.	Secretary	21
	Appointment of Secretary	21
	Suspension and Removal of Secretary	21
	Powers and Duties of Secretary	22
	Secretary to Attend Meetings	22
23.	Payments to Participants	22
24.	Inland Revenue approval	22

PART A

The clauses in this Part A specify details required for the purposes of Part B of this Constitution

I. The Company (clause 1.1 of Part B)

The Company is *Financial Services Complaints Limited*.

II. Number of Directors (clause 9.1 of Part B)

The number of directors of the Company will be a minimum of 5.

III. Names of Directors (clause 9.2 of Part B)

The directors of the Company at the date of adoption of this Constitution are:

Kenneth Barry Johnston, Chairperson, deemed to be appointed pursuant to clause 9.4(a) for a term expiring on 30 September 2012;

Lynette Anne McMorrان, deemed to be appointed pursuant to clause 9.4(b) for a term expiring on 30 September 2011;

Leonie Joan Wallwork, deemed to be appointed pursuant to clause 9.4(b) for a term expiring on 30 September 2012;

Bruce William Cronin, deemed to be appointed pursuant to clause 9.4(c) for a term expiring on 30 September 2011.

Raewyn Christine Fox, deemed to be appointed pursuant to clause 9.4(c) for a term expiring on 30 September 2012; and

IV. Quorum for Directors' Meetings (clause 10.8 of Part B)

The quorum for a meeting of directors will be 5 directors.

PART B**1. INTERPRETATION**

1.1 In this Constitution, unless the context otherwise requires, the following terms will have the following meanings:

<i>Act</i>	The Companies Act 1993 as amended from time to time.
<i>Alternate director</i>	The meaning given to that term in clause 9.12.
<i>Annual Meeting</i>	The meeting of the Shareholder held pursuant to clause 6.1.
<i>Board and Board of Directors</i>	In relation to the Company means those directors appointed pursuant to clause 9 who number not less than the quorum specified in clause IV of Part A of this Constitution acting together as a board of directors, or, if the Company has only one director, that director.
<i>Chairperson</i>	The chairperson of the Company.
<i>Company</i>	The company specified in clause I of Part A of this Constitution.
<i>FSP</i>	A Financial Service Provider as defined under the FSP(RDR) Act
<i>FSP(RDR) Act</i>	The Financial Service Providers (Registration and Disputes Resolution) Act 2008 as amended from time to time
<i>Participant</i>	Those persons entered on a register to be held by the Company who are for the time being approved by the Directors as a Participant.
<i>Participation Agreement</i>	The Participation Agreement entered into between the Company and participants in the scheme relating to the operation and functions of the Company and the scheme.
<i>Reserve Scheme</i>	The financial service providers reserve dispute resolution scheme as provided for in Section 71 of the FSP(RDR) Act
<i>Scheme</i>	The dispute resolution scheme run by the Company
<i>Secretary</i>	The secretary of the Company appointed pursuant to clause 22.1.

<i>Shares</i>	The meaning given to that term in clause 3.1.
<i>Shareholder</i>	The meaning given to that term in clause 3.1.
<i>Terms of Reference</i>	The rules established from time to time by the Company which constitute and govern the powers and obligations of the Scheme and its Chief Executive Officer.

- 1.2 Except as specified in clause 1.1, words or expressions used in this Constitution which are defined in the Act will have the meaning given by the Act unless the context otherwise requires.
- 1.3 Expressions referring to writing will be construed as including references to printed, typewritten, painted, engraved, lithographed, communicated in any electronic form, or otherwise traced or copied.
- 1.4 This Constitution has no effect to the extent that it contravenes the Act.

2. **OBJECTS AND MANAGEMENT OF THE COMPANY**

Objects and Powers

- 2.1 The objects of the Company are:
- (a) To establish, maintain and promote a dispute resolution scheme for the financial services industry to be known as the “Financial Services Complaints Scheme” or “FSCL”;
 - (b) To have the Scheme approved under Part 3 of the FSP(RDR) Act;
 - (c) To appoint and support a Chief Executive Officer, a General Manager and, where necessary Panel members, for such periods and on such terms and conditions of engagement as the Directors think fit, with powers:
 - (i) to consider, subject to the Terms of Reference, complaints in connection with the provision of financial services by any Participant;
 - (ii) to facilitate the satisfaction, settlement or withdrawal of such complaints whether by conciliation, the making of recommendations or determinations or by such other means as shall seem expedient;
 - (iii) to promote and publicise the Financial Services Complaints Scheme and to encourage and provide advice to Participants on the development and maintenance of good complaint-handling practices;
 - (iv) to consult and maintain relationships with stakeholders and other approved dispute resolution schemes;

- (d) The Board will not appoint persons to the positions of Chief Executive and General Manager unless those persons hold a legal qualification and/or have proven expertise and experience in alternative dispute resolution;
 - (e) To consult and maintain relationships with government or other authorities (whether national, local or otherwise) or any corporations, companies or persons on all matters relating to and affecting the business of those referred to in clause 2.1(a) and the resolution of complaints in relation thereto.
- 2.2 The Company and the Board have full powers, rights and privileges (to the maximum extent permitted by law) to carry on or undertake any business or activity, do any act, or enter into any transaction, to further the objects set out in clause 2.1, including without limitation the right to levy, charge, collect and receive subscriptions, levies, fees and other payments from Participants and expend the same in furthering all or any of the objects or providing for the expenses of the Company.
- 2.3 The income and property of the Company, from wherever derived, shall, subject to the Terms of Reference and the Participation Agreement, be applied solely towards the promotion of the objects of the Company as set out in clause 2.1. No portion of the income or property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the Shareholder or the Participants.

Management

- 2.4 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Directors. The Directors will approve the budget of the Company from time to time. The Directors may at any time and from time to time obtain money for the purposes of the Company by charging fees to the Participants. The form, amount and terms of any fees may be determined by the Directors at their discretion and, without limitation, may include any or all of:
- (a) An annual participation fee;
 - (b) A joining fee; and
 - (c) A dispute fee.
- 2.5 Each fee will be due and payable by each Participant as at the date specified by the Directors.
- 2.6 The Board is to ensure that the Company has processes in place to:
- (a) Monitor Participants' compliance with the Scheme, and
 - (b) Accept and respond to complaints about the operation of the Scheme.
- 2.7 The Board may delegate to a committee of directors, a director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.

- 2.8 The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:
- (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on directors of the Company by the Act and this Constitution; and
 - (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

Participation

- 2.9 A person is eligible to be a Participant if, and only if, it is a FSP .
- 2.10 To become a Participant a person must have been approved by the Directors as a Participant.
- 2.11 To apply for approval as a Participant, a FSP must deliver to the Company a completed and signed application in the form approved by the Directors from time to time together with such particulars as the Directors may require.
- 2.12 There is no limit on the number of Participants. Participation is not transferable.
- 2.13 Participants who are members of a Group may, at the request of the Chief Executive Officer, nominate a Head Member for that Group for the purposes of:
- (a) Receiving communications for the Company, including notices and invoices on behalf of each member of the Group;
 - (b) Dealing with disputes and customer enquiries on behalf of the Participant;
 - (c) Exercising a vote of a Participant of a Group;
 - (d) Such other matters as may be included in the nomination form of a head Participant.
- 2.14 The Directors may not approve as a Participant a FSP who has not complied with remedial action imposed on it by another approved dispute resolution scheme or the Reserve scheme.
- 2.15 The Directors may:
- (a) Approve a FSP as a Participant subject to such terms and conditions as the Directors may in their discretion determine and may reject any application for Participation without being required to provide a reason for that rejection. Without limiting the generality of this clause 2.15 the Directors may impose different terms and conditions on admission to participation and on different persons admitted to participate; and
 - (b) Delegate any of the powers and functions under clauses 2.11 to 2.15(a) (both inclusive) to the Chief Executive Officer.

- 2.16 At any time after 31 March 2011 a Participant may withdraw as a Participant in the Scheme by giving to the Secretary not less than twelve months' notice to that effect and participation ceases upon expiry of that notice. The Directors may, in their absolute discretion, resolve to accept a Participant's withdrawal from participation at any time even if notice has not been given in accordance with this clause and may waive any portion of the notice period.
- 2.17 If a Participant:
- (a) ceases to be a FSP or carry on business in the Industry;
 - (b) is required to be licensed or authorised under any Act to be a FSP and the Participant ceases to be so licensed or authorised; or
 - (c) becomes insolvent;
- the Participant shall immediately cease to be a Participant of the Scheme.

Independent review

- 2.18 The Board will ensure that an independent process review of the Scheme is undertaken not less than every five years, with the first such review to be completed by 31 March 2015.
- 2.19 The independent reviewer's report on the Scheme will be provided to the Minister of Consumer Affairs within three months of completion of the report.

3. *SHARES*

Rights and Powers Attaching to Shares

- 3.1 The capital of the Company consists of one hundred fully paid ordinary shares (*Shares*) which are to be held by the person who for the time being occupies the position of Chairperson (*Shareholder*).

Board to Issue Shares

- 3.2 The Board does not have the power to issue further shares.

4 *TRANSFER AND TRANSMISSION OF SHARES*

- 4.1 Subject to the terms of this Constitution:
- (a) The Shares are transferable only to the person who for the time being occupies the position of Chairperson; and
 - (b) Upon change of person holding the office of Chairperson (other than pursuant to clause 10.3), the Shares must be transferred from the exiting Chairperson to the new Chairperson. The Company may act as agent of the Shareholder for the purpose of

signing the necessary share transfer form, and doing all things or signing all other documents necessary or expedient, to give effect to this clause 4.1.

- 4.2 Upon the death or incapacity of the shareholder, the shares shall be transferred by transmission to the person holding the office of Chairperson.

5 DISTRIBUTIONS

Distributions

- 5.1 The Board will not authorise any distribution or dividend except upon winding up or liquidation of the Company.
- 5.2 If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed to the Shareholder or among the Participants of the Company. Instead the property shall be given or transferred to some other organisation or body having objects similar to the objects of the Company, or to a charitable organisation or purpose, within New Zealand.

6 MEETINGS OF THE SHAREHOLDER

Annual Meeting

- 6.1 An annual meeting of the Shareholder will be held once in each calendar year; and
- (a) Not later than 5 months after the balance date of the Company; and
 - (b) Not later than 15 months after the previous annual meeting.
- 6.2 Representatives of each Participant, together with those other persons entitled to receive notice of Annual Meetings (set out in clause 6.4), are entitled to attend and speak at all Annual Meetings.
- 6.3 The Shareholder and Participants shall, at the Annual Meeting, receive the annual report.

Notice of Meetings

- 6.4 Written notice of the time and place of a meeting of the Shareholder must be given to the Shareholder and to:
- (a) Every Participant;
 - (b) The Chief Executive Officer;
 - (c) The Secretary; and
 - (d) Every director and an auditor of the Company,
- not less than 10 working days before the meeting.

Quorum

6.5 A quorum for a meeting of shareholders is present if the Shareholder is present.

7 DIRECTORS' DUTIES

7.1 A director of the Company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the Company.

7.2 A director must exercise a power for a proper purpose.

7.3 A director of the Company must not act, or agree to the Company acting, in a manner that contravenes the Act or this Constitution.

7.4 A director of the Company must not:

- (a) Agree to the business of the Company being carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors; or
- (b) Cause or allow the business of the Company to be carried on in a manner likely to create a substantial risk of serious loss to the Company's creditors.

7.5 A director of the Company must not agree to the Company incurring an obligation unless the director believes at that time on reasonable grounds that the Company will be able to perform the obligation when it is required to do so.

7.6 A director of the Company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation:

- (a) The nature of the Company; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

Reliance on Information and Advice

7.7 Subject to clause 7.8, a director of the Company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (b) An employee of the Company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
- (c) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence; or

- (d) Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- 7.8 Clause 7.7 applies to a director only if the director:
- (a) Acts in good faith; and
 - (b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) Has no knowledge that such reliance is unwarranted.

8 SELF INTEREST TRANSACTIONS

- 8.1 A director of the Company must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the interests register, and, if the Company has more than one director, disclose to the Board:
- (a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- 8.2 A general notice entered in the interests register or disclosed to the Board to effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 8.3 A transaction entered into by the Company in which a director of the Company is interested may be avoided by the Company at any time before the expiration of three months after the transaction is disclosed to the Shareholder (whether by means of the Company's annual report or otherwise).
- 8.4 A transaction cannot be avoided if the Company receives fair value under it.
- 8.5 Nothing in clauses 8.1 to 8.4 applies in relation to:
- (a) Remuneration or any other benefit given to a director in accordance with clauses 11.1 and 11.2; or
 - (b) An indemnity or any other benefit given to a director in accordance with clauses 12.1 to 12.6.
- 8.6 If all entitled persons have agreed to or concur in the Company entering into a transaction in which a director is interested, nothing in clauses 8.1 to 8.4 will apply in relation to that transaction.

- 8.7 Subject to the Act, the Shareholder may, by ordinary resolution, ratify or approve any act or omission of a director or the Board.

Actions by Interested Directors

- 8.8 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company, may:
- (a) Vote on a matter relating to the transaction; and
 - (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purposes of a quorum; and
 - (c) Sign a document relating to the transaction on behalf of the Company; and
 - (d) Do any other thing in his or her capacity as a director in relation to the transaction, as if the director were not interested in the transaction.

Use of Company Information

- 8.9 A director of the Company who has information in his or her capacity as a director or employee of the Company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except:
- (a) For the purposes of the Company; or
 - (b) As required by law; or
 - (c) In accordance with clauses 8.10 or 8.11 of this Constitution; or
 - (d) In complying with clause 8.1 of this Constitution.

Disclosure

- 8.10 A director of the Company may, unless prohibited by the Board, disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

Disclosure & Use of Information Generally

- 8.11 A director of the Company may disclose, make use of, or act on the information if:
- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
 - (b) The director is first authorised to do so by the Board; and

- (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Company.

9 APPOINTMENT AND REMOVAL OF DIRECTORS

Minimum Number

- 9.1 The number of directors will be not less than the minimum number specified in clause II of Part A of this Constitution.

Appointment

- 9.2 A person named as a director in clause III of Part A of this Constitution holds office as a director from the date of adoption of this Constitution until that person ceases to hold office as a director in accordance with the Act or this Constitution.
- 9.3 A person must not be appointed a director of the Company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company.
- 9.4 The Board shall comprise:
 - (a) A Chairperson, appointed in accordance with clause 10.1;
 - (b) Two representatives of Participants appointed to be industry Directors in accordance with clauses 9.5 and 9.6;
 - (c) Two persons appointed to be consumer Directors in accordance with clauses 9.7 and 9.8.
- 9.5 An industry director must be a person with experience in and knowledge of one or more sectors of the financial services industry.
- 9.6 Prior to appointing an industry Director, the Directors must consult with, and have regard to the views of, such individuals and organisations as the Directors consider appropriate in order to give proper consideration to the person's expertise in and knowledge of one or more sectors of the industry, independence, capacity and willingness to consult with the industry.
- 9.7 A consumers' Director must be a person who has an interest in, and is knowledgeable about, consumers' interests relevant to the Scheme.
- 9.8 Prior to appointing a consumers' Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key consumer and community organisations) as the Directors think appropriate in order to give proper consideration to the person's expertise in consumer affairs, independence, capacity, and willingness to consult with consumer organisation, and knowledge of issues pertaining to the financial services industry.

- 9.9 A Director holds office for a maximum period of three years from the date of their appointment, and is eligible for re-appointment.

Vacation of Office

- 9.10 The office of director of the Company is vacated if:
- (a) The term of a director's appointment expires; or
 - (b) The person holding that office:
 - (c) Resigns by signing a written notice of resignation and delivering it to the address for service of the Company, such notice to be effective when it is received at that address or at a later time specified in the notice; or
 - (d) Is removed from office in accordance with clause 9.12; or
 - (e) Becomes disqualified from being a director pursuant to section 151 of the Act; or
 - (f) Dies.

Appointment and Removal of Directors by Board

- 9.11 Where a director ceases to hold office by virtue of the vacation of office pursuant to clause 9.10 the continuing directors will, failing appointment of a new director to that director's position by the party entitled to appoint that director within a period of one month following such vacation, have power at any time thereafter to appoint any other qualified person to hold office as a director in such director's place until such time as the party entitled to appoint that director appoints a director, at which time the director appointed by the Board shall immediately cease to be a director.
- 9.12 The Board may remove a director if a director:
- (a) Becomes disqualified from being a director under the provisions of the Companies Act 1993;
 - (b) Becomes of unsound mind or whose estate becomes liable to be dealt with under the law relating to protected persons or mental health;
 - (c) Does any act which, in the opinion of the Directors, is likely to lead that Director or the Company into disrepute.

Alternate Directors

- 9.13 One alternate director shall be appointed for each director (other than the Chairperson) (*alternate director*) at the same time and in the same manner as each director is appointed.
- 9.14 An alternate director is entitled to notice of all meetings of the Board and, if the director is not present at such a meeting, is entitled to attend and vote in his or her stead.

- 9.15 An alternate director may exercise any powers that the director may exercise and in the exercise of any such power by the alternate director he or she is an officer of the Company and not deemed to be an agent of the director.
- 9.16 An alternate director is subject in all respects to the conditions attaching to the director of the Company generally except that he or she is not entitled to any remuneration otherwise than from the director for whom he or she has been appointed an alternate director.
- 9.17 The appointment of an alternate director may be terminated at any time by the appointer notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the director for whom he or she has been appointed an alternate director vacates office as a director of the Company.
- 9.18 The termination of an appointment of an alternate director must be effected by a notice in writing signed by the appointer and served on the Company.

10 DIRECTORS' MEETINGS

Chairperson

- 10.1 The first Chairperson of the Company will be as named in clause III of Part **A** of this Constitution and thereafter the Board (including the current Chairperson) shall be entitled to appoint one person as Chairperson and as a director in place of the first or other subsequent Chairperson.
- 10.2 The Company shall use its best endeavours to ensure that no person is appointed as the Chairperson who has a material interest which may conflict with his or her duties as Chairperson.
- 10.3 When a Board meeting is held and the Chairperson is not present within ten minutes from the time appointed for the meeting, the directors present must elect one of their number to be chairperson of the meeting.

Notice of Meeting

- 10.4 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the Board by giving notice in accordance with this clause 10.4 and clauses 10.5 and 10.6.
- 10.5 Not less than 2 working days' written notice of a meeting of the Board must be given either by hand, pre-paid post, telegram cable, telex, fax, or email to every director, every alternate director and to the Secretary. The notice must include the date, time and place of the meeting and the matters to be discussed.
- 10.6 An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors agree to the waiver.

Methods of Holding Meetings

10.7 A meeting of the Board may be held either:

- (a) By a number of the directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By the contemporaneous linking together by telephone or other means of communication of the directors constituting a quorum, whether or not any one or more of the directors are absent from New Zealand and such meeting will be deemed to be properly held provided the following conditions are met:
 - (i) all the directors including alternate directors entitled to receive notice of a meeting of the directors will have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;
 - (ii) each of the directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other directors taking part;
 - (iii) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other directors taking part;
 - (iv) a director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a director will be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

Quorum

10.8 A quorum for a meeting of the Board will be that number of directors specified in clause IV of Part A of this Constitution, provided there is present at any such meeting a person appointed pursuant to clause 9.4.2 and a person appointed pursuant to either clause 9.4.3 or clause 9.4.4.

10.9 No business may be transacted at a meeting of the Board if a quorum is not present.

10.10 If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting will then stand adjourned for five working days. The quorum for an adjourned meeting of the Board will then be those present.

Voting

10.11 Every director has one vote. An alternate director will not vote at a meeting at which the person for whom he or she is an alternate director attends.

- 10.12 The Chairperson will have a casting vote.
- 10.13 Subject to clause 10.15, a resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
- 10.14 A director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly abstains from voting or dissents from or votes against the resolution at the meeting.
- 10.15 The Company must not engage in any of the following activities or determine any of the following matters without the passing of a unanimous resolution of the full Board:
- (a) Alteration, addition to, rescission or replacement of the Participation Agreement and/or the Terms of Reference (pursuant to the terms of the Participation Agreement);
 - (b) Recommendation to the Shareholder to amend or replace this Constitution.

Minutes

- 10.16 The Board must ensure that minutes are kept of all proceedings at meetings of the Board, including names of directors in attendance.
- 10.17 The minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Unanimous Resolution

- 10.18 A resolution in writing, signed or assented to by letter, telegram, cable, telex, email, facsimile or other written form by all directors including alternate directors (when the person for whom he or she is appointed is unable to act), then entitled to receive notice of a Board Meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 10.19 A resolution pursuant to clause 10.18 may consist of several documents (including facsimile, email or other similar means of communication) in like form each signed or assented to by one or more directors (or alternate directors, as the case may be).
- 10.20 A copy of any such resolution must be entered in the minute book of Board proceedings.

Acts of Directors

- 10.21 All acts done at a Board meeting or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director, or to act as a director, or that a person so appointed was not qualified, is valid as if a person had been duly appointed and was qualified to be a director.
- 10.22 A director may not hold any other office of profit under the Company nor, either personally or by his or her firm, act in a professional capacity for the Company.

Other Proceedings

10.23 Except as provided in this Constitution, the Board may regulate its own procedure.

11 REMUNERATION AND OTHER BENEFITS

11.1 The Board may authorise the payment of remuneration or the provision of other benefits by the Company to a director for services as a director or in any other capacity, or the entering into of a contract to such effect, if the Board is satisfied that to do so is fair to the Company.

11.2 If a payment or benefit is authorised under clause 11.1:

- (a) The Board must ensure that particulars of that action are forthwith entered in the interests register; and
- (b) Directors who vote in favour of that action must sign a certificate stating that, in their opinion, it is fair to the Company, and the grounds for that opinion.

11.3 The directors (without the prior consent of the Shareholder) will be entitled to be paid reasonable travelling, hotel, entertaining and other expenses incurred in attendances at Board meetings and when in any other manner whatsoever and wheresoever engaged on the business or affairs of the Company.

12 INDEMNITY AND INSURANCE

12.1 Except as provided in clauses 12.2 to 12.6, the Company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the Company or a related company in respect of:

- (a) Liability for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

12.2 The Company will indemnify a director or employee of the Company or a related company for any costs incurred by him or her in any proceeding:

- (a) That relates to liability for any act or omission in his or her capacity as a director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

12.3 The Company will indemnify a director or employee of the Company or a related company in respect of:

- (a) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a director or employee; or

- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability;
- not being criminal liability, or liability in respect of a breach, in the case of a director, of the duty specified in clause 7.1 of this Constitution or, in the case of an employee, of any fiduciary duty owed to the Company or related company.
- 12.4 The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company in respect of:
- (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
- (b) Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) Costs incurred by that director or employee in defending any criminal proceedings that have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee and in which he or she is acquitted.
- 12.5 The directors who vote in favour of authorising the effecting of insurance under clause 12.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.
- 12.6 The Board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the Company or a related company are forthwith entered in the interests register.
- 12.7 For the purposes of this clause 12, the definitions in section 162(9) of the Act apply.

13 METHOD OF CONTRACTING

- 13.1 A contract or other enforceable obligation may be entered into by the Company as follows:
- (a) An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
- (i) two or more directors of the Company; or
- (ii) if there is only one director, by that director whose signature must be witnessed; or
- (iii) a director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or
- (iv) one or more attorneys appointed by the Company in accordance with section 181 of the Act;

- (b) An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority;
- (c) An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

14 AUDITOR

14.1 The Company must, at each Annual Meeting, appoint an auditor to:

- (a) Hold office from the conclusion of the meeting until the conclusion of the next Annual Meeting; and
- (b) Audit the financial statements of the Company for the accounting period next after the meeting.

14.2 Notwithstanding clause 14.1, the Company need not appoint an auditor if, at or before the meeting, the Shareholder unanimously resolves that no auditor be appointed. Such a resolution will cease to have effect at the commencement of the next Annual Meeting.

14.3 The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

15 ALTERATION OF CONSTITUTION

15.1 Subject to the Act, and the FSP(RDR) Act, this Constitution may be altered or replaced at any time by Special Resolution. A Special Resolution to alter or replace the Constitution shall only be passed following a recommendation by the Board to the Shareholder to pass such Special Resolution, pursuant to clause 10.15 (b).

15.2 An application to change the name of the Company specified in clause I of Part A of this Constitution is not an amendment of this Constitution for the purposes of this

16 ACCOUNTS

16.1 The Board must ensure that, within five months of the company's balance date, special purpose financial accounts are completed in relation to the company in that balance date, and are dated and signed on behalf of the company by two company directors.

17 ANNUAL REPORT

17.1 The Board must, within three months after the balance date of the Company, prepare an annual report on the affairs of the Company during the accounting period ending on that date. A copy of that report must be sent to the Minister of Consumer Affairs.

- 17.2 The Board must cause a copy of the annual report to be sent to the Shareholder (unless the Shareholder has elected not to receive the annual report under section 212 of the Act) and to each Participant, not less than ten working days before the date fixed for holding the Annual Meeting.
- 17.3 Every annual report for the Company must be in writing and be dated and, subject to section 211(2) of the Act, must contain the reports, financial statements and information required by section 211(1) of the Act.

18 MANNER OF SERVICE ON SHAREHOLDER AND CREDITORS

- 18.1 A notice, statement, report, accounts, or other document to be sent to the Shareholder or a creditor who is a natural person may be:
- (a) Delivered to that person; or
 - (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
 - (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- 18.2 A notice, statement, report, accounts, or other document to be sent to a creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in section 388 or section 390, as the case may be, of the Act.
- 18.3 A notice, statement, report, accounts, or other document to be sent to a creditor that is a body corporate, not being a company or an overseas company, may be:
- (a) Delivered to a person who is a principal officer of the body corporate; or
 - (b) Delivered to an employee of the body corporate at the principal office or principal place of business of the body corporate; or
 - (c) Delivered in such manner as the Court directs; or
 - (d) Delivered in accordance with an agreement made with the body corporate; or
 - (e) Posted to the address of the principal office of the body corporate or delivered to a box at a document exchange which the body corporate is using at the time; or
 - (f) Sent by facsimile machine to a telephone number used for the transmission of documents by facsimile at the principal office or principal place of business of the body corporate.

19 REMOVAL FROM THE REGISTER

19.1 The Shareholder, or the Board, or any person or persons authorised by the Board, may, subject to section 318 of the Act, request the removal of the Company from the Register on the ground that:

- (a) The Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
- (b) The Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation.

20 REGISTERED OFFICE AND ADDRESS FOR SERVICE

20.1 Subject to the Act, the Board may change the registered office of the Company at any time.

20.2 Subject to the Act, the Board may change the address for service of the Company at any time

21 SHARE REGISTER

21.1 The Board may divide the share register into two or more registers, which may be kept in different places.

22 SECRETARY

Appointment of Secretary

22.1 The Company shall appoint an employee of the Company or other person to act as Secretary to the Company on such terms, at such remuneration and upon such conditions as it thinks fit.

Suspension and Removal of Secretary

22.2 The Company shall have the power to suspend or remove the Secretary.

Powers and Duties of Secretary

22.3 The Company may vest in the Secretary such powers, duties and authorities as it may from time to time determine and the Secretary must accept all such powers and authorities subject at all time to the control of the Company.

Secretary to Attend Meetings

22.4 The Secretary is entitled to attend all annual and other meetings of the Board and the Shareholder and may be heard on any matter.

23 PAYMENTS TO PARTICIPANTS

23.1 No Participant of the Company or any person associated with a Participant shall participate in or materially influence any decision made by the Company in respect of the payment to or on behalf of that Participant or associated person of any income, benefit or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value). The provisions and effect of this clause shall not be removed from this document, and shall be included and implied into any document replacing this document.

24 INLAND REVENUE APPROVAL

24.1 No addition or alteration of the aims/objects, payments to Participants clause or the winding-up clause shall be approved without the approval of the Inland Revenue. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document.

Certified as the Constitution of **FINANCIAL SERVICES COMPLAINTS LIMITED**

Susan Jane Taylor, Company Secretary
For and on behalf of the Company

Date: 26 September 2011