

Dated 20 June 2011

**CONSTITUTION OF
Dispute Resolution Services Limited**

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OF
DISPUTE RESOLUTION SERVICES LIMITED**

PART I - PRELIMINARY

1. PRELIMINARY

1.1 Definitions

In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993.

"**Board**" means the board of the Company.

"**Company**" means Dispute Resolution Services Limited.

"**Crown**" means Her Majesty the Queen in right of New Zealand.

"**Crown Entities Act**" means the Crown Entities Act 2004.

"**Director**" means a person appointed as a director of the Company in accordance with this Constitution.

"**Law**" includes any rules of common law, statute, regulation, order in council, bylaw, ordinance or other subordinate or secondary legislation in force from time to time.

"**Ombudsmen Act**" means the Ombudsmen Act 1975.

"**Public Finance Act**" means the Public Finance Act 1989.

"**Share**" means a share in the Company.

"**Shareholder**" means the Crown, acting by and through a Shareholding Minister, as holder of Shares in the Company.

"**Shareholding Minister**" means a Minister of the Crown by and through whom the Crown acts as holder of Shares in the Company in terms of clause 3.1.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

(a) **capitalised words or expressions** have the same meaning as in the Act.

(b) references to:

(i) **clauses and Schedules** are to clauses of and Schedules to this Constitution; and

(ii) **paragraphs** in a Schedule are to the paragraphs in that Schedule;

- (c) **derivations** of any defined word or term shall have a corresponding meaning;
 - (d) a **gender** includes each other gender;
 - (e) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Constitution;
 - (f) the word **including** and other similar words do not imply any limitation;
 - (g) a **person** includes any individual, company, corporation, firm, club, partnership, joint venture, association of persons (corporate or not), trust or governmental agency (in each case whether or not having separate legal personality);
 - (h) the **plural** includes the **singular** and vice versa; and
 - (i) a reference to a **statute** includes all regulations and other subordinate legislation made under that statute. A reference to a statute, regulation or other subordinate legislation includes that statute, regulation or subordinate legislation as amended or replaced from time to time.
- 1.3 **The Act:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution, in accordance with the Act.

PART II – PURPOSE AND NATURE

2. PURPOSE

2.1 Purpose: The purpose of the Company is:

- (a) To operate as a successful business and, to that extent, to be as profitable and efficient as any comparable business not owned by the Crown.
- (b) To provide an independent review service and, where appropriate, mediation services, for people who are dissatisfied with decisions made by the Accident Compensation Corporation under the Accident Compensation Act 2001.
- (c) To operate a dispute resolution scheme for the retail financial services market in accordance with the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (d) To provide dispute resolution (including mediation services) on a commercial basis.
- (e) To undertake such other activities as are incidental to the above purposes.

For the avoidance of doubt, the above purposes are a general statement of intent and are not intended to restrict the capacity, rights or powers of the Company.

2.2 Crown company:

- (a) The Crown owns the Company and the Company is to be named as an organisation in Schedule 4 of the Public Finance Act and Schedule 1 of the Ombudsmen Act.
 - (b) For the avoidance of doubt, any sections of the Crown Entities Act which apply to the Company by virtue of the Public Finance Act or this Constitution shall apply to the Company as if references in those sections to:
 - (i) Crown Entity Company were to the Company;
 - (ii) Responsible Minister were to the Shareholding Ministers;
 - (iii) Crown Entity Group were to the Company and its subsidiaries;
 - (iv) the Board were to the Board of the Company;
 - (v) Members were to the Directors of the Company, respectively.
 - (c) Until such time as the Company is named as an organisation in Schedule 4 of the Public Finance Act and Schedule 1 of the Ombudsmen Act as contemplated by clause 2.2(a) the Company shall operate as though it was named as an organisation in Schedule 4 of the Public Finance Act and Schedule 1 of the Ombudsmen Act and, for the purposes of Schedule 4 of the Public Finance Act, the Company shall, in addition to those provisions listed in section 45M of the Public Finance Act, be subject to the following provisions of the Crown Entities Act:
 - (i) section 139;
 - (ii) section 150; and
 - (iii) sections 161 to 164.
- 2.3 Auditor:** Under the Public Audit Act 2001 the Controller and Auditor General is to be the Auditor of the Company.
- 2.4 Application of State Sector Act:** The Company is an employer for the purposes of sections 84 to 84B of the State Sector Act 1988.

PART III – SHARES AND DIVIDENDS

3. COMPANY'S SHARES

- 3.1 Initial shareholding:** At the time of adoption of this Constitution, the Company has 2 Shares held by the Crown acting through the Minister for Accident Compensation Corporation (1 Share) and Minister of Finance (1 Share).
- 3.2 Shares held by Crown:** Every share in the Company must be held by a Minister of the Crown on behalf of the Crown and the following shall apply:
 - (a) Shares held in the name of a person described as a Minister are deemed to be held by the person for the time being holding the office of that Minister;

- (b) the Prime Minister may at any time, by written notice to the address for service of the Company, change the Ministerial portfolio by and through which the Crown acts in relation to any Shares in the Company and any such change will have effect from the date specified in the notice (or, if no date is specified, from the date on which the notice is received by the Company); and
- (c) it is not necessary to complete or register a transfer of Shares in the Company upon a change in:
 - (i) the person holding the office of Minister; or
 - (ii) a Ministerial portfolio.

3.3 Crown's representative:

- (a) A Shareholding Minister may at any time, by written notice to the address for service of the Company, authorise any person to act as the Crown's representative at any or all of the meetings of Shareholders of the Company, and such authority will be on terms and conditions determined by the Shareholding Minister and set out in the relevant notice.
- (b) Any person authorised as a Crown's representative shall be entitled to exercise at the meeting or meetings the same powers as the Crown acting by and through that Shareholding Minister could exercise if present in person at the meeting or meetings.

4. ISSUE OF SHARES

- 4.1 **Issue of Shares:** Neither the Board nor any other person may issue Shares, or securities convertible into Shares, or options to acquire Shares in the Company unless the issue is authorised in writing by the Shareholders.
- 4.2 **Shares to rank equally:** Subject to clause 4.1, the Board may issue further Shares that rank as to voting or distribution rights or both equally with or prior to any existing Shares in the Company. Any such issue will not be treated as an action affecting the rights attached to the existing Shares.
- 4.3 **No pre-emptive rights:** Section 45 of the Act does not apply to the Company.

5. DISTRIBUTIONS TO SHAREHOLDERS

- 5.1 **Distributions:** The Board may make distributions in accordance with the Act provided that the Board may not issue Shares in lieu of dividends under section 54 of the Act without a written authority to do so signed by the Shareholders.

6. CALLS ON SHARES

6.1 Directors' powers to make calls:

- (a) The Board may make calls upon the Shareholders in respect of any money that is:
 - (i) unpaid on their Shares; and
 - (ii) not made payable at a fixed time or times by the terms of issue of the Shares.

- (b) Subject to receiving at least 10 Working Days notice specifying the time and place of payment, each Shareholder must pay to the Company the amount called on that Shareholder's Shares, in the manner specified in the notice.
- (c) A call may be revoked or postponed.
- (d) A call may be required to be paid by instalments.
- (e) Unless the Board resolves to the contrary, a call will be deemed to have been made at the time the Board resolution authorising the call is passed.

6.2 Liability of joint holders and interest:

- (a) The holders of any Share are jointly and severally liable to pay all calls in respect of that Share.
- (b) If the call in respect of a Share is not paid when due, the person from whom the sum is due must pay interest on the sum from the due date for payment to actual payment, at a rate not exceeding five percent above the Company's prime overdraft rate as certified by the Board. The Board may waive payment of all or part of that interest.

6.3 Payment required by terms of issue of Shares: If the terms of issue of a Share require a sum to be paid on issue or at any fixed date, for the purpose of this Constitution a call will be deemed to be duly made and the sum will become payable on the date specified in the terms of issue.

6.4 Proof of liability: The amount of any unpaid call or instalment may be recovered as a debt from the Shareholder at any time after the debt becomes payable. In any proceedings the proof of the following matters is conclusive evidence of the debt:

- (a) the name of the Shareholder is entered on the share register as a holder of the Shares in respect of which the debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of the call was duly given to the Shareholder.

PART IV – SHAREHOLDERS' RIGHTS AND OBLIGATIONS

7. POWERS OF SHAREHOLDERS

7.1 Exercise of powers reserved to Shareholders: Unless otherwise specified in the Act or this Constitution, or the terms of issue of the relevant Shares, the powers reserved to the Shareholders of the Company by this Constitution, the Act or the terms of issue of the relevant Shares may be exercised only:

- (a) at a meeting of Shareholders pursuant to section 120 or section 121 of the Act; or
- (b) by a resolution in lieu of a meeting pursuant to section 122 of the Act.

8. MEETINGS OF SHAREHOLDERS

8.1 Proceedings at meetings of Shareholders: Schedule 1 applies to meetings of Shareholders in addition to Schedule 1 of the Act.

PART V - DIRECTORS

9. APPOINTMENT AND REMOVAL OF DIRECTORS

9.1 Number of Directors: The number of Directors of the Company shall be determined by the Shareholders (as varied from time to time) but shall not be fewer than 3 or more than 7.

9.2 Appointment of Directors:

- (a) Subject to sub-clause (c), the Directors are the persons appointed from time to time as Directors by a notice in writing signed by the Shareholders and who have not been removed or resigned or disqualified from office under this Constitution or the Act.
- (b) The Shareholders may appoint any Director as the Chairperson or Deputy Chairperson of Directors from time to time by notice in writing signed by the Shareholders.
- (c) Every appointment of a Director or Chairperson or Deputy Chairperson of Directors shall be for such term (if any) as is specified in the Notice of Appointment (if any), but no term shall exceed 3 years unless the Shareholders consider it necessary or desirable in any particular case.
- (d) A Director may be removed from office, or removed from his or her position as Chairperson or Deputy Chairperson, at any time by a notice in writing signed by the Shareholders.
- (e) A notice given under sub-clauses (a), (b) or (d) takes effect upon receipt of it at the address for service of the Company (including the receipt of a facsimile copy) unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by Shareholders giving the notice.
- (f) At the end of the term of appointment, any Director shall be eligible for reappointment.
- (g) A Director may resign by delivering a signed notice of resignation in writing to the address for service of the Company, such notice being effective when it is received at the address or at such later time specified in the notice, and on receipt of receiving a notice of resignation from a Director, the Company shall give written notice of such resignation to the Shareholders.

9.3 Director ceasing to hold office: Without prejudice to section 157 of the Act, the office of Director is vacated if the person holding that office becomes permanently incapacitated and the remaining Directors resolve that he or she is no longer capable of carrying out his or her powers and duties as a Director by reason of that incapacity.

10. LIMITATION ON POWERS OF DIRECTORS

10.1 Statement of intent: The Board must ensure that every decision made or any action taken by it is consistent with the Company's current statement of intent, prepared as required under section 139 of the Crown Entities Act.

10.2 Whole of government directions: The Company is required to have regard to any whole of government direction that would apply to the Company if it were a Crown entity company under the Crown Entities Act.

10.3 Remuneration:

- (a) Subject to clause 10.3(c) but notwithstanding section 161(1) of the Act, the amount of remuneration or other benefits payable by the Company to Directors for services as a Director, or in any other capacity, shall be determined by the Shareholders from time to time by written notice signed by them to the address for service of the Company.
- (b) Subject to clause 10.3(c), the power of the Board to authorise:
 - (i) the making of loans by the Company to a Director or the giving of guarantees by the Company for debts incurred by a Director; and
 - (ii) the entering into of a contract to do any of the things set out in this clause 10.3, is subject to the written approval of the Shareholders.
- (c) The Board may authorise the reimbursement by the Company of reasonable travelling, hotel, and other expenses incurred by Directors in attending meetings of the Board or shareholders or in relation to any other affairs of the Company.
- (d) The Board shall not authorise the payment of any compensation or other payment or benefit to a Director for loss of office as a Director.

11. PROCEEDINGS OF BOARD

11.1 Meetings of the Board: Schedule 2 governs proceedings at meetings of the Board. Schedule 2 of the Act does not apply to the Company.

11.2 Written resolutions of Board permitted:

- (a) A resolution in writing signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.
- (c) A copy of any such resolution must be entered in the minute book of the Board proceedings.

12. INTERESTED DIRECTORS

12.1 Restrictions on voting: A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may not (subject to this clause 12.1) vote on a matter relating to the transaction; but may

- (a) vote on any matter to which either of clauses 13.1 and 13.2 apply;
- (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 purpose of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do anything else as a Director in relation to the transaction,

as if he or she were not interested in the transaction.

- 12.2 **Relaxation of restrictions:** The Shareholders may suspend or relax the prohibition on interested Directors voting to any extent in respect of any particular transaction by written notice signed by them to the address for service of the Company.

13. INDEMNITY AND INSURANCE

13.1 Indemnifying Directors and employees:

- (a) The Company may indemnify a Director or employee of the Company or a Related Company for any costs incurred by him or her in any proceeding:
 - (i) that relates to liability for any act or omission in his or her capacity as a Director or employee; and
 - (ii) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- (b) The Company may indemnify a Director or employee of the Company or a Related Company in respect of:
 - (i) 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
 - (ii) 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 section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the Company or Related Company.

13.2 Insurance:

- (a) 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:
 - (i) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee;
 - (ii) costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
 - (iii) costs incurred by that Director or employee in defending any criminal proceedings:
 - (1) 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
 - (2) in which he or she is acquitted.
- (b) The Directors who vote in favour of authorising the effecting of insurance under paragraph (a) of this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

13.3 Definitions:

In clauses 13.1 to 13.2:

"Director" includes a former Director;

"effect insurance" includes pay, whether directly or indirectly, the costs of the insurance;

"employee" includes a former employee;

"indemnify" includes relieve or excuse from liability, whether before or after the liability arises and

"indemnity" has a corresponding meaning.

PART VI – ADMINISTRATION, FINANCIAL AND MISCELLANEOUS

14. CONTRACTING BY THE COMPANY

- 14.1 **Method of Contracting:** In addition to the other methods of contracting set out in section 180 of the Act, 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 a Director, or other person or class of persons, whose signature or signatures must be witnessed.

15. CHANGE OF COMPANY NAME, REGISTERED OFFICE OR ADDRESS FOR SERVICE

- 15.1 **Change of Company name:** A Director may apply to the Registrar of Companies to change the name of the Company only if:

- (a) the Board has approved the Director doing so; and
- (b) the Shareholders have given written approval of the change of name.

- 15.2 **Change of registered office or address for service:** Whenever the Board gives notice to the Registrar of a change in the registered office or the address for service of the Company, the Board must at the same time give written notice of the change to the Shareholders.

16. GOOD EMPLOYER

- 16.1 **Good employer:** The Company will operate a personnel policy that complies with the principle of being a "good employer" (as defined by the Crown Entities Act) and with effect from the financial year ending 30 June 2012, report in its annual report on the extent of its compliance.

PART VII – LIQUIDATION

17. LIQUIDATION

- 17.1 Surplus Assets:** Subject to the terms of issue of any Shares, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the Shareholders in proportion to the Shareholdings.
- 17.2 Distribution in specie:** With the approval of an Ordinary Resolution of Shareholders, the liquidator of the Company may divide the whole or any part of the assets of the Company among the Shareholders in kind (whether or not they are of the same kind) and for that purpose the liquidator may:
- (a) attribute such values to assets as the liquidator considers appropriate; and
 - (b) determine how the division will be carried out as between the Shareholders or different classes of Shareholders.
- 17.3 Vesting in trust:** With the approval of an Ordinary Resolution of Shareholders, the liquidator of the Company may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of the Shareholders. The liquidator may determine the terms of the trust.

18. REMOVAL FROM THE REGISTER

- 18.1 Directors may remove the Company from the Register:** If the Company:
- (a) 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) 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,
- the Board may, with the prior approval of the Shareholding Ministers, request the Registrar to remove the Company from the New Zealand Register.

SCHEDULE 1 - SHAREHOLDER MEETINGS

Chairperson

1. If the chairperson of the Board is present at a meeting of Shareholders, he or she must chair the meeting. If there is no chairperson, or if the elected chairperson is absent then:
 - (a) the deputy chairperson (if any) of the Board;
 - (b) one of the Directors appointed for that purpose by the Board; or
 - (c) a Director appointed for the purpose by those Shareholders present, shall preside at every meeting.
2. If no Director:
 - (a) is present within 15 minutes after the time appointed for holding the meeting; or
 - (b) if none of the Directors present is willing to act as chairperson, then the Shareholders present shall choose a Shareholder present to be chairperson of the meeting.

Methods of holding meetings

3. A meeting of Shareholders may be held either:
 - (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

4. Except as otherwise provided in this Constitution, a quorum for a meeting of Shareholders is present if Shareholders (including any Crown representative authorised to act under clause 3.3) or their proxies are present who are between them able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

Proxies

5. A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a Shareholder of the Company.
6. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is sent to the address for service of the Company (or such other place within New Zealand that is specified for that purpose in the notice convening the meeting) at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the

written notice appointing a proxy is signed under a power of attorney, a copy of the power of attorney and a signed certificate of non-revocation of the power of attorney must accompany the notice.

7. Where:

- (a) the Shareholder has died or become incapacitated;
- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the Share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

Postal votes not permitted

8. Postal votes are not permitted.

SCHEDULE 2 - DIRECTORS' MEETINGS

Chairperson

1. The chairperson of Directors (or if there is no chairperson or the chairperson is not present within 10 minutes after the time appointed for the commencement of the meeting, the deputy chairperson of Directors, if any) will chair each meeting of the Board at which he or she is present.
2. If at a meeting of the Board the chairperson or deputy chairperson, if any, is not present within 10 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

Notice of meeting

3. 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.
4. Subject to paragraph 5, not less than 2 days' notice of a meeting of the Board must be sent to every Director unless the Director is:
 - (a) out of New Zealand; or
 - (b) unable to attend the meeting because of a disability,unless the chairperson (or in the chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least 2 hours notice is given.
5. If a Director, who is for the time being out of New Zealand supplies the Company with a facsimile number or address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director.
6. The notice of meeting must:
 - (a) be a written notice sent to the address or facsimile number, or an electronic mail message sent to an electronic mail address, which the Director provides to the Company for that purpose, or if an address or facsimile number or electronic mail address is not provided, then written notice to his or her last place of employment or residence or facsimile number known to the Company; and
 - (b) include the date, time, and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of those matters.
7. An irregularity in the notice of a meeting 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 entitled to receive notice of the meeting agree to the waiver.

Method of holding meetings

8. 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 means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

Quorum

9. A quorum for a meeting of the Board is a majority of the Directors entitled to vote on the matters arising at the meeting.
10. No business may be transacted at a meeting of Directors if a quorum is not present.

Voting

11. Every Director has one vote.
12. In the case of an equality of votes, the chairperson of Directors has a casting vote.
13. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it.
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 or votes against the resolution at the meeting. A Director who abstains from voting will not be treated as having voted in favour of it for the purposes of the Act.

Minutes

15. The Board must ensure that minutes are kept of all proceedings at meetings of the Board and that a record is kept of written resolutions of the Directors. Minutes that have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings at the meeting.

Unanimous resolution

16. A resolution in writing, signed or assented to by all Directors 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.
17. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more Directors.
18. A copy of any such resolution must be entered in the minute book of Board proceedings.

Other proceedings

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