

TABLE OF CHANGES: CONSTITUTION DECEMBER 2022

Current wording	Reasons for change	Proposed final wording
<p>1. Name, Definitions and Interpretation</p> <p>1.2 The Scheme has been established:</p> <p>a) to provide a complaints handling service for Participants and users of their Financial Services; and</p> <p>b) to do anything incidental to that purpose.</p>	<p>This change ensures the section aligns with the new definition of "Other Participants".</p>	<p>1.2 The Scheme has been established:</p> <p>a) to provide a complaints handling service for all Participants and Complainants; and</p> <p>b) to do anything incidental to that purpose.</p>
<p>New definition added.</p>		<p>"Commerce Commission" means the regulatory authority established under the Commerce Act 1986;</p>
<p>New definition added</p>		<p>"Deadlock" represents the point in time at which the Participant has fully considered a Complaint through its internal Complaints procedure and has decided that the Complaint cannot be resolved by that procedure or the Scheme considers Deadlock has been reached under paragraph 8.2 of the Terms of Reference;</p>
<p>"Financial Services" means any financial services provided in New Zealand by a financial services provider registered under the Act;</p>	<p>Recognises the changes to the registration requirements under the Act.</p>	<p>"Financial Services" means any financial services provided in New Zealand by a financial services provider as defined under the Act;</p>
<p>"Other Participants" are Participants who provide Financial Services of a different type from those insurance services provided by the Participants which are members of, e.g. Insurance Council of New Zealand, Financial Services Council or Health</p>	<p>This change brings the definition in line with changes proposed to Clause 3 Membership of the Commission.</p>	<p>"Other Participants" are Participants which provide different services to Participants;</p>

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Funds Association of New Zealand (or their successors).		
"Participation Agreement" means the standard form agreement as amended by the Scheme from time to time to be entered into by the Scheme and a Participant that binds the Participant to comply with this Constitution and the Terms of Reference;	No longer required.	Delete definition.
"Scheme" means the Insurance & Savings Ombudsman Scheme Incorporated until 1 November 2015 and the Insurance & Financial Services Ombudsman Scheme Incorporated from that date on;	This definition has become redundant and can be simplified. Aligns with date the amended TOR come into effect.	"Scheme" means the Insurance & Financial Services Ombudsman Scheme Incorporated;
New definition added.		"Stakeholders" are any or all of those who have an interest in the Scheme, including but not limited to Participants, the Minister, relevant industry and consumer associations and other interested organisations and persons".

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<p>1.4 “<i>Subsidiary</i>” has the meaning given in section 5(1) of the Companies Act 1993 as if “company” in that definition included any body corporate whenever and wherever incorporated including outside of New Zealand; “<i>Terms of Reference</i>” means the Terms of Reference of the Scheme as amended from time to time in accordance with this Constitution. Headings in this Constitution do not affect their construction or interpretation.</p> <p>1.5 For the purposes of this Constitution:</p> <p>a) Financial Services provided by a Subsidiary of a Participant that is not itself a Participant are deemed to have been provided by the Participant; and</p> <p>b) Reference to the provision of Financial Services includes reference to their non-provision.</p>	<p>Change corrects a layout issue.</p>	<p>“<i>Subsidiary</i>” has the meaning given in section 5(1) of the Companies Act 1993 as if “company” in that definition included any body corporate whenever and wherever incorporated including outside of New Zealand;</p> <p>“<i>Terms of Reference</i>” means the Terms of Reference of the Scheme as amended from time to time in accordance with this Constitution.</p> <p>1.4 For the purposes of this Constitution:</p> <p>a) Financial Services provided by a Subsidiary of a Participant that is not itself a Participant are deemed to have been provided by the Participant; and</p> <p>b) Reference to the provision of Financial Services includes reference to their non-provision.</p> <p>c) Headings in this Constitution do not affect their construction or interpretation.</p>

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<p>3. Membership of the Commission</p> <p>3.1 The Commission comprises:</p> <ul style="list-style-type: none"> a) a Member who is appointed in accordance with Clause 3.2 to be the Chairperson of the Commission; b) three Members appointed by the Commission who have experience in the financial services industry. The Commission will invite the Boards of the Insurance Council of New Zealand, the Financial Services Council, the Health Funds Association of New Zealand (or their successor organisations) and any other relevant industry groups, to nominate candidates and will take those candidates into consideration in the appointment process. At least one of the Members appointed under this clause must have experience in a sector of the financial services industry serviced by Other Participants; c) three Members appointed by the Commission who have an interest in and are knowledgeable about consumer interests relating to any aspect of the Scheme. The Commission will invite the Minister to nominate candidates and the Commission will take those candidates into consideration in the appointment process; and 	<p>The amended appointment process better reflects current membership.</p>	<p>3.1 The Commission comprises:</p> <ul style="list-style-type: none"> a) a Member who is appointed in accordance with Clause 3.2 to be the Chairperson of the Commission; b) three Members appointed by the Commission who have experience in the financial services industry. The Commission may consult with Stakeholders in any selection process for candidates. c) three Members appointed by the Commission who have an interest in and are knowledgeable about consumer interests relating to any aspect of the Scheme. The Commission may consult with Stakeholders in any selection process for candidates.

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<p>4. Responsibilities of the Commission</p> <p>4.2 The Commission must:</p> <p>...</p> <p>b) monitor this Constitution, the Terms of Reference and the operations of the Scheme (generally and by way of the review procedure set out in Clause 7) and consider any recommendations made by the Ombudsman, other relevant industry groups or a reviewer appointed pursuant to Clause 7 to change this Constitution or the Terms of Reference.</p>	<p>This change ensures the section aligns with the amendments proposed to Clause 7.</p>	<p>4.2 The Commission must:</p> <p>...</p> <p>c) monitor this Constitution, the Terms of Reference and the operations of the Scheme (generally and by way of the review procedure set out in Clause 7) and consider any recommendations made by the Ombudsman, other relevant industry groups or a Reviewer appointed pursuant to Clause 7 to change this Constitution or the Terms of Reference.</p>
<p>5. Proceedings of the Commission</p> <p>...</p> <p>5.6 A resolution in writing signed or assented to by letter, facsimile or electronic written communication by all the Members (whether on one or more separate documents) has effect as if it had been passed at a meeting of the Commission duly convened and held.</p>	<p>The change updates redundant references.</p>	<p>5.6 A resolution in writing signed or assented to by email by all the Members (whether on one or more separate documents) has effect as if it had been passed at a meeting of the Commission duly convened and held.</p>

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<p>7. Review of the Scheme</p> <p>7.2 The Commission will determine the procedures and timetable to be adopted in the review, but the Reviewer/s must ensure that submissions and comments are invited from:</p> <ul style="list-style-type: none"> a) Participants; b) Members; c) relevant industry and consumer associations; d) the Minister; e) the general public; and f) any other person or group the Reviewer/s considers appropriate. 	<p>The change aligns the Clause with the new definition of Stakeholders.</p>	<p>7.2 The Commission will determine the procedures and timetable to be adopted in the review, but the Reviewer/s must ensure that submissions and comments are invited from the Ombudsman, the Deputy Ombudsman, Stakeholders and any other person or group the Reviewer/s considers appropriate.</p>
<p>8. Notices</p> <p>8.1 A notice may be given by one party to the other party either by serving it personally or by sending it by post, facsimile transmission or email to the other party's current address or, in the case of a Participant, the address notified to the Scheme from time to time.</p> <p>...</p> <p>8.3 Where a notice is sent by facsimile transmission or email, service of the notice is deemed to be effected by properly addressing the facsimile transmission or email and the notice is deemed to have been served on the date of its despatch.</p>	<p>The change updates redundant references.</p>	<p>8.1 A notice may be given by one party to the other party either by serving it personally or by sending it by post or email to the other party's current address or, in the case of a Participant, the address notified to the Scheme from time to time.</p> <p>...</p> <p>8.3 Where a notice is sent email, service of the notice is deemed to be effected by properly addressing the email and the notice is deemed to have been served on the date of its despatch</p>

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<p>10. Obligations of Participants</p> <p>10.1. Each Participant:</p> <p>a) must at all times comply with this Constitution, the Terms of Reference and the Participation Agreement entered into by the Participant and the Scheme;</p>	<p>Participants are required not to bring the industry into disrepute.</p>	<p>10.1. Each Participant:</p> <p>...</p> <p>a) must at all times comply with this Constitution, the Terms of Reference and not bring the industry into disrepute.</p>
<p>10.1. Each Participant:</p> <p>b) must operate a bona fide internal complaints handling service in relation to its Financial Services for the benefit of Complainants and publicise to users of their Financial Services the availability of that service;</p>	<p>There needs to be minimum requirement for a Participant's operation and publicisation of a complaints process, both on Participants' websites and in any contractual documents, and when a complaint is made.</p> <p>In addition, there needs to be a requirement to publicise consumers' ability to refer a complaint to the Scheme, both on Participants' websites and in any contractual documents, and when a complaint is made.</p>	<p>b)</p> <p>Must operate a bona fide internal complaints handling process in relation to its Financial Services for the benefit of consumers that:</p> <p>i. Is publicised and promoted to consumers on the Participant's website and/or any contractual documents;</p> <p>ii. at a minimum, involves one objective review and formal response to a customer before Deadlock is issued; and</p> <p>iii. includes a clear outline of the complaints handling process that is provided to a customer immediately upon expression of dissatisfaction, either by email or in writing; and</p> <p>iv. informs consumers the Scheme is available to provide them with a free complaints resolution service, by publicising and promoting it on the Participant's website and/or any contractual documents.</p>

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<p>10 Obligations of Participants</p> <p>10.1. Each Participant:</p> <p>c) must, in writing, inform users of their Financial Services that the Scheme is available to provide them with a free complaints resolution service;</p>	<p>We intend to move this clause into 10.1b.iv, to better streamline the publication requirements for Participants.</p>	<p>Deleted and added to 10.1b.</p>
<p>10.1 Each Participant:</p> <p>...</p> <p>h) consents to the provision by the Scheme to the Minister, the Financial Markets Authority or other regulator of any information concerning the Participant; and</p>	<p>We need to clarify what information the IFSO Scheme can provide to a regulator about a complaint.</p>	<p>10.1 Each Participant:</p> <p>...</p> <p>h) consents to the provision of any information concerning the Participant by the Scheme to the Minister, the Financial Markets Authority or other regulator; and</p>
<p>11. Participant Fees and Charges</p> <p>...</p> <p>11.2 Where the Scheme needs information from the Participant about its business in order to calculate any levy or other charge, the Scheme may request the Participant to provide that information and the Participant must promptly provide and certify that information as requested by the Scheme. The Scheme's calculation of the amount of any levy or other charge payable by the Participant will, in the absence of manifest error, be final and binding upon the Participant.</p>	<p>The change updates the language used</p>	<p>11.2 Where the Scheme needs information from the Participant about its business in order to calculate any levy or other charge, the Scheme may ask the Participant to provide that information and the Participant must promptly provide and certify that information as requested by the Scheme. The Scheme's calculation of the amount of any levy or other charge payable by the Participant will, in the absence of manifest error, be final and binding upon the Participant.</p>

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<p>12. Termination of Participation</p> <p>12.2 The Scheme may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of the Scheme:</p> <p>...</p> <p>b) materially or persistently breaches, or fails to perform, any obligation of the Participant under the Constitution, the Terms of Reference or its Participation Agreement;</p> <p>c) fails to take remedial action imposed on the Participant by the Scheme;</p>	<p>The change to 12.2 b) removes the redundant reference to Participant Agreement.</p> <p>Clause 12.2 c) is being cahnged because we need to expand the ability to terminate if a Participant fails to take any remedial action imposed by another dispute resolution scheme, to prevent Participants leaving one scheme and moving to a new Scheme to avoid the remedial action imposed.</p>	<p>12.2 The Scheme may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of the Scheme:</p> <p>...</p> <p>b) materially or persistently breaches, or fails to perform, any obligation of the Participant under the Constitution or the Terms of Reference;</p> <p>c) fails to take remedial action imposed on the Participant by the Scheme or by any other Approved Scheme;</p>
<p>12. Termination of Participation</p> <p>12.2 The Scheme may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of the Scheme:</p> <p>...</p> <p>d) acts in a way that brings the Participant or the Scheme into disrespect; or</p>	<p>This clause needs to be updated and aligned with clause 10.1.a.</p>	<p>12.2 The Scheme may, by written notice to the Participant, at any time immediately terminate its participation if the Participant in the opinion of the Scheme:</p> <p>d) acts in a way that brings the Participant or the Scheme into disrepute; or</p>

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<p>14. Responsibilities of the Ombudsman</p> <p>14.1 The Ombudsman is responsible for managing the affairs of the Scheme including:</p> <p>...</p> <p>a) making recommendations to the Commission where the Ombudsman identifies the need for changes to be made to:</p> <p style="padding-left: 20px;">i) this Constitution, the Terms of Reference or the Participation Agreement; or</p>	<p>The change removes the redundant reference to Participant Agreement.</p>	<p>14.1 The Ombudsman is responsible for managing the affairs of the Scheme including:</p> <p>...</p> <p>a) making recommendations to the Commission where the Ombudsman identifies the need for changes to be made to:</p> <p style="padding-left: 20px;">i) this Constitution or the Terms of Reference; or</p>
<p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p style="padding-left: 20px;">h) to co-operate with other Approved Schemes if a Complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence);</p>	<p>The referenced legislation needs to be updated.</p>	<p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p style="padding-left: 20px;">h) to co-operate with other Approved Schemes if a Complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 2020 or subsequent legislation and protecting information that is subject to an obligation of confidence);</p>

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<p>Responsibilities of the Ombudsman</p> <p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p>i) to co-operate with the Registrar of Financial Service Providers appointed under section 35 of the Act, including by communicating information in accordance with sections 17 and 34 of the Act; and</p>	<p>To simplify the references to the Act.</p>	<p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p>i) to co-operate with the Registrar of Financial Service Providers appointed under the Act, including by communicating information as required by the Act; and</p>
<p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p>j) if there is a series of material Complaints about a particular Participant or class of Participants, to communicate that fact to the Financial Markets Authority.</p>	<p>The change aligns the obligation with the revised reporting obligations under the Act.</p>	<p>14.2. The Ombudsman must ensure the Scheme complies with its obligations under the Act including:</p> <p>...</p> <p>j) notify the Financial Markets Authority, the Commerce Commission and/or any other relevant regulator as required by the Act:</p>