

# **Proposed Reserve Dispute Resolution Scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008**

**A Discussion Paper**

**June 2009**

## Foreword

Government agencies are currently undertaking considerable work to implement a registration system for all financial service providers.

In order to register, financial service providers will be required to meet conduct checks defined in Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. In addition, most providers will have to meet additional licensing and authorisation requirements, and providers must identify the consumer dispute resolution service to which they belong.

Under the Financial Service Providers Act, providers have the ability to form their own dispute resolution schemes and have them approved. The Act sets out the criteria that must be met in order to obtain approval. I encourage financial service providers to consider this option. To this end, a discussion paper outlining draft guidelines to assist schemes applying to become an approved dispute resolution scheme has been released.

Industry-led schemes - run by relevant industry members who strongly support the principles underpinning their scheme - deliver good outcomes for consumers and can also be tailored to the specific industry sector as compared to a catch-all scheme.

This said, the Financial Service Providers Act recognises that not all financial service providers may be able to co-ordinate to form industry schemes. Accordingly, the Act requires the establishment of a reserve scheme that any financial service provider may join.

This discussion paper sets out the proposed form and rules of the reserve scheme. It is important that the reserve scheme has rules that provide for fair and reasonable outcomes for both consumers and industry members. It is also important that the reserve scheme is not seen as the “second class” scheme or as the “gold plated” scheme. I invite your comments on the proposed rules.

For those considering establishing their own consumer dispute resolution scheme the proposed reserve scheme form and rules may provide a type of template. You are most welcome to use this discussion paper for this purpose.

Hon Heather Roy  
**Minister of Consumer Affairs**

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## Glossary of abbreviations and terms

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**The Act:** Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**ASIC:** The Australian Securities and Investment Commission. Under the Corporations Act, ASIC has an equivalent function to the Ministry of Consumer Affairs in approving consumer dispute resolution schemes in the financial sector.

**Benchmarks/ Benchmark Principles/Australian Benchmarks:** Benchmarks for Industry-based Consumer Dispute Resolution Schemes, released in 1997 by the Consumer Affairs Division of the Department of Industry, Science and Tourism. The benchmarks are directly incorporated into section 52(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

**Deadlock:** The situation where a complaint reaches an impasse in the member's internal complaints scheme. The consumer is unsatisfied with how the complaint is being dealt with, but the member has not referred the complaint to an external dispute resolution scheme.

**Determination:** a recommendation or award made by the dispute resolver.

**Dispute resolver:** The person from the dispute resolution service provider assigned to resolve and make a decision on a complaint.

**Financial Service Providers Act:** Abbreviated reference to the Financial Service Providers (Registration and Disputes Resolution) Act 2008.

**FSP:** Financial Service Provider.

**Advisory body:** The body that oversees the reserve scheme dispute resolution service operations and the reserve scheme service provider.

**MCA/ the Ministry:** Ministry of Consumer Affairs.

**Member:** A financial service provider that is a member of the reserve scheme.

**Reserve scheme service provider / service provider:** The entity providing the dispute resolution service for the reserve scheme.

**The Minister:** Unless otherwise specified, the Minister of Consumer Affairs.

**The reserve scheme:** The financial service providers reserve dispute resolution scheme.

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# 1. Seeking your views

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1. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 requires financial service providers (FSPs) to be registered. In order for FSPs to be registered they are required to be members of a dispute resolution scheme if they provide financial services to the public. The dispute resolution scheme may be either an approved dispute resolution scheme or the reserve scheme.
2. The purpose of this consultation paper is to propose and seek feedback on:
  - the operating rules of the reserve scheme;
  - the organisational form and governance arrangements of the reserve scheme; and
  - the process to establish the reserve scheme.
3. Section 72 of the Financial Service Providers (Registration and Dispute Resolution) Act provides that the Governor General may, on the recommendation of the Minister of Consumer Affairs, prescribe rules about the functions of the reserve scheme. The Minister may only make a recommendation to the Governor General after consultation with the Ministers of Finance and Commerce and any persons or their representatives the Minister considers are likely to be substantially affected by the recommendation. Those who are likely to be affected include financial service providers who may want to consider joining the reserve scheme, and consumers who may be using the services of a financial provider who joins the reserve scheme. Feedback from consumer and industry organisations that have a general interest in the effective operations of the financial services sector is also welcome.

## Making a submission

4. The Ministry of Consumer Affairs invites submissions on the proposals for the operation and governance of the reserve scheme outlined in this discussion paper.
5. Please note that a separate consultation paper outlines proposals in regard to the approval criteria and process for consumer dispute resolution schemes in the financial sector.
6. Parties who wish to make a submission are invited to respond by Friday 31 July 2009. Please contact the Ministry of Consumer Affairs ([fsp.schemes@mca.govt.nz](mailto:fsp.schemes@mca.govt.nz)) if you are experiencing difficulties meeting this deadline.
7. Submissions are to be emailed in either Adobe PDF or Microsoft Word format to the Ministry of Consumer Affairs ([fsp.schemes@mca.govt.nz](mailto:fsp.schemes@mca.govt.nz)), with “Submission on the Financial Service Providers Act 2008 Reserve Scheme” as a subject heading. Alternately, submitters may send hard copies of their submission to:

Anne Yau  
Ministry of Consumer Affairs                      Fax 64 4 470 2533  
PO Box 1473, Wellington

8. Submitters should indicate any documents attached in support of their submission in a covering letter. The Ministry of Consumer Affairs will acknowledge receipt of all submissions electronically. Please contact Anne Yau at [fsp.schemes@mca.govt.nz](mailto:fsp.schemes@mca.govt.nz) or phone 64 4 474 2650 if you do not receive electronic acknowledgement of your submission within five business days.

## OFFICIAL INFORMATION ACT 1982

Please note that any submissions you make may be published and subject to a request for release under the Official Information Act 1982.

In providing your submission, please advise us if you have any objections to the release of all or part of your submission and the basis of your objection. When preparing and releasing any summary of submissions and when considering any Official Information Act requests, the Ministry will carefully review any representations you make in this regard.

## Privacy Act 1993

Any personal information that you supply to the Ministry in the course of making a submission will be used only by the Ministry when considering matters covered by this discussion paper.

When preparing any summary of submissions on Ministry discussion papers, it is the Ministry's normal practice to set out the names of parties making submissions. Your name will be included in any such summary unless you inform the Ministry that you do not wish your name to be included. To indicate your wishes, or to view personal information held about you in relation to matters covered by this discussion paper, or to request correction of that information, please contact the Ministry of Consumer Affairs ([fsp.schemes@mca.govt.nz](mailto:fsp.schemes@mca.govt.nz)).

## Consideration of Submissions

9. The Ministry of Consumer Affairs will consider all submissions and, then taking these into account, will make recommendations to the Minister of Consumer Affairs on the final rules for the operation and governance of the reserve scheme. Following consultation with the Ministers of Finance and Commerce, the Minister of Consumer Affairs will then make a recommendation to the Governor General on the rules of the reserve scheme. The rules will then be made available on the Ministry of Consumer Affairs website and the process to select an agent to operate the reserve scheme will commence.

## Summary indicative timeline

10. An indicative implementation timetable for the reserve scheme is given below (see Chapter 6 for full details of the establishment process and timeline).

<b>Indicative Timeline for Establishment of Reserve Scheme</b>	
Deadline for submissions	<b>31 July 2009</b>
Governance arrangements and operating rules of reserve scheme finalised	<b>30 September 2009</b>
Advisory body and reserve scheme service provider appointed	<b>December 2009</b>
Consultation on levies for reserve scheme	<b>December- February 2010</b>
<b>Reserve Scheme established</b>	<b>May 2010</b>

## 2. Background – improving regulation of the finance sector

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11. In September 2008, three pieces of legislation were enacted to improve the regulation of financial institutions, financial products and financial service providers: the Reserve Bank Amendment Act 2008, the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
12. The main requirements arising from the new legislation are:
  - Registration of all financial service providers to provide a means of identifying and monitoring financial service providers;
  - Prudential supervision by the Reserve Bank of non-bank deposit takers;
  - Regulation by the Securities Commission of financial advisers to encourage professionalism and improve consumer confidence in the sector; and
  - Providing for a comprehensive approach to consumer dispute resolution and redress.
13. The outcomes desired from this new legislation and existing legislation regulating the finance sector are:
  - Achieving a sound and efficient financial sector;
  - Investment which encourages growth and innovation;
  - An environment which facilitates wealth accumulation; and
  - Confidence in the sector which encourages participation by consumers and market participants.
14. The need for sound regulation of the finance sector has been heightened by the recent collapse of numerous New Zealand finance companies and the current global financial crisis. Full implementation of these Acts is scheduled by December 2010.
15. The Reserve Bank is the sole regulator of New Zealand's financial system, including the non-bank deposit taking sector. The Reserve Bank Amendment Act 2008 provides for prudential regulations for non-bank deposit takers that are currently being developed by the Reserve Bank. These regulations will introduce consistent standards for the measurement and management of capital, liquidity and related-party exposures, and will require deposit takers to comply with new governance and risk management requirements.
16. The Financial Advisers Act 2008 specifies who may perform a financial adviser service and the financial products and services they may advise on. The Act establishes different tiers of disclosure and conduct obligations, according to the complexity and risk posed by the advice given. Those who wish to provide advice on securities, futures contracts or an interest in land, or who provide a financial planning service, will be required to be authorised by the Securities Commission, as well as registered on the register of financial service providers. Those who wish to provide advice in regards to a call debt security, a bank term deposit, an insurance product (excluding a life insurance product issued after 31 December 2008) or a consumer credit contract will be required to be registered, but not authorised. The Act also provides for advisers to operate as part of a qualifying financial entity for certain financial adviser services. In this case, the entity itself takes on responsibility for ensuring the individual advisers within



its organisation comply with their obligations under the Act. To receive qualifying financial entity status the entity must seek approval from the Securities Commission.

## **The Financial Service Providers (Registration and Dispute Resolution) Act 2008**

17. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 was enacted to improve both market discipline and consumer access to redress.
18. The Act has three parts. Parts 1 and 2 concern the registration of financial service providers. The registration system is being developed and implemented by the Companies Office, Ministry of Economic Development.
19. Part 3 concerns consumer dispute resolution, which is a mandatory requirement of registration for those providing financial services to the public. The implementation of the dispute resolution regime is being undertaken by the Ministry of Consumer Affairs. Registered financial service providers (FSPs) must be either a member of an approved dispute resolution scheme or the reserve scheme that will be set up by Consumer Affairs. The Act sets out the principles and minimum requirements for the rules of approved dispute resolution schemes and the reserve scheme.
20. In summary, the rules of any approved scheme and the reserve scheme need to comply with the following principles<sup>1</sup> which are considered international best practice:
  - **Accessibility:** The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers;
  - **Independence:** The decision-making process and administration of the scheme are independent from scheme members;
  - **Fairness:** The scheme promotes decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based;
  - **Accountability:** The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems;
  - **Efficiency:** The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance;
  - **Effectiveness:** The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.
21. A separate consultation document – Draft Guidelines to Assist Schemes Applying to Become an Approved Dispute Resolution Scheme Under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, is available at this website [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz) or email [fsp.schemes@mca.govt.nz](mailto:fsp.schemes@mca.govt.nz).

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<sup>1</sup> These principles are set out in Part 3 of the Act and are based on the Benchmarks for Industry-based Customer Dispute Resolution Schemes developed by the Australian Department of Industry, Science and Tourism. The description of the principles is taken from the Benchmarks.

22. The policy underpinning the Financial Service Providers Act anticipates that financial service providers will seek to have their own dispute resolution schemes approved. The Government believes that a dispute resolution scheme that is developed by FSPs for their own particular industry will be more effective as it will have better knowledge and expertise regarding the participants' products and services and receive more support and commitment.
23. It is anticipated that existing voluntary industry-based dispute resolution schemes, such as the Banking Ombudsman and Insurance & Savings Ombudsman may apply to become approved dispute resolution schemes.
24. Other FSPs such as building societies, credit unions, finance companies and financial advisers, who currently do not have independent dispute resolution schemes, are encouraged to establish a scheme(s) or join another approved scheme if that scheme's rules allow.
25. Where a FSP does not have its own industry-run dispute resolution scheme, the FSP may join the reserve scheme.

### 3. The reserve scheme

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26. This section of the paper discusses in more detail some of the proposed rules of the reserve scheme. Section 4 of the paper sets out the full proposed operating rules of the reserve scheme.

Please feel free to comment on any aspect of the proposed reserve scheme. Where we would like specific feedback, questions are given at the end of each section. All questions are also set out at the end of the document so that you can use this section to submit your feedback. You are not required to answer each and every question.

#### Establishment and functions of the reserve scheme

27. Subpart 3 of Part 3 of the Financial Service Providers Act provides for the reserve dispute resolution scheme. The reserve scheme is established by the Governor General by Order in Council following the recommendation of the Minister of Consumer Affairs. The Minister may only make a recommendation to the Governor General after consultation with the Ministers of Finance and Commerce and any persons or their representatives the Minister considers are likely to be substantially affected by the recommendation.
28. The reserve scheme must meet the principles as set out in paragraph 20 and the same criteria for an approved dispute resolution scheme as set out in sections 52 and 63 of the Act (see Appendix One).
29. The reserve scheme is an integral part of the dispute resolution regime. It provides an assurance or backstop to industry that there will be a dispute resolution scheme for financial service providers to join by the date the Act is enforced.
30. Any financial service provider (FSP) may join the reserve scheme including those FSPs that have an approved dispute resolution scheme covering their sector of the finance industry; however, a member of the reserve scheme cannot also be a member of an approved scheme.
31. It is expected that that the reserve scheme will be fully funded by industry.
32. The reserve scheme will not be a central body to act as a “clearing house” for all enquiries and complaints or to coordinate the FSP industry’s dispute resolution schemes and their sharing of information. Promotion of the disputes resolution regime and a 0800 number operated by the Ministry of Consumer Affairs contact centre will assist in directing enquiries and complaints to the appropriate scheme.
33. It is proposed that the purpose and functions of the reserve scheme are:
- To consider, at no cost to the complainant, complaints within its jurisdiction arising out of the provision within New Zealand of financial services by any member financial service provider to individuals and businesses that have no more than 19 employees;
  - Subject to specified limitations, to facilitate the satisfaction, settlement or withdrawal of such complaints whether by agreement, by making recommendations or awards or by such other means as seem expedient;
  - To promote and publicise the reserve scheme and to advise member FSPs on the development and maintenance of good complaint-handling practices; and

- To cooperate and collaborate with approved dispute resolution schemes, government and other authorities, companies or persons on all matters relating to and affecting the settlement of complaints and any financial services business related to those complaints.

Q1. Are there any reserve scheme functions that should be added, deleted or amended? If yes, please comment.

## Operating rules of the reserve scheme: discussion of main rules

34. This section outlines the main proposed operating rules of the reserve scheme and the basis on which they were developed. The full set of proposed operating rules is set out in Part 4.

### Scope

#### *What is meant by complaint*

35. The Financial Service Providers Act does not define the term “complaint”. The Act requires that schemes must have a rule stating what complaints can be made to the scheme and that these relate to contract, statute, industry codes and any other matters as defined in the rules.
36. The Australian Standard on Complaints Handling (AS ISO 10002-2006) defines a “complaint” as:
- An expression of dissatisfaction made to an organisation, related to its products, or the complaints-handling process itself, where a response or a resolution is explicitly or implicitly expected.
37. The Australian definition is for a complaint at the beginning of the complaints process i.e. when it should be directed in the first instance to the organisation concerned.
38. This definition is widely accepted in Australia and ASIC is currently proposing to adopt this definition when approving dispute resolution schemes in the financial sector. ASIC views this definition as advantageous as it “removes the onus on investors and consumers to explicitly state that something is a complaint, promotes more consistent treatment of complaints and helps prevent complaints from falling through the cracks”. ASIC also found that in some instances, complaints were not being identified as complaints early enough in the process which delayed speedy resolution. Prompt identification of complaints facilitates earlier resolution, which benefits both consumers, and financial services providers.
39. A complaint could be seeking redress related to cost, timeliness, fairness, contractual matters, business practice, poor service or interpretation of service/product rules, terms and conditions.
40. Disputed transactions handled by dispute resolution schemes may also involve matters that are disciplinary complaints. A disciplinary complaint is one related to conduct or competence and is an expression of dissatisfaction or concern that a financial service provider has not acted competently or ethically, or has acted negligently. These complaints are handled by the relevant industry disciplinary body. Disciplinary procedures do not normally involve compensation for consumers.
41. A consumer dispute resolution scheme, however, is aimed at providing redress for consumers. Therefore a complaint seeking redress for any harm resulting from a financial service

provider's conduct or incompetence may be taken to a dispute resolution scheme. Information sharing with the appropriate disciplinary bodies will be required in these types of complaints.

42. A complaint is not dissatisfaction with commercial decisions, prices or interest rates where no actual "harm" requiring redress has been suffered. Accordingly, it is not expected that the reserve scheme resolve complaints about the commercial judgement of a member organisation, although the scheme should investigate administrative matters about how that judgement is effected. However, the reserve scheme may consider complaints about commercial judgement which involves an act or omission contrary to or not in accordance with a duty owed at law, in a code of practice, or pursuant to the terms (express or implied) of the contract between the scheme member and the consumer.
43. For the purposes of the reserve scheme, it is proposed that "complaint" means
- An expression of dissatisfaction or concern about a service or a product provided by a member company for which the complainant expects redress (remedial action or compensation) and has not received satisfactory resolution.

Q2. Do you agree with the reserve scheme's definition of "complaint"? If no, please give reasons and suggest alternatives.

#### ***When can complaints be taken to the reserve scheme***

44. It is proposed that a complaint may be taken to the reserve scheme for consideration only when it has already been taken to the member's internal complaint resolution procedure, or has been raised with the member if a sole provider, or has been taken to the member's industry complaint resolution scheme if one exists, and:
- redress has not been offered or the redress offered was considered unsatisfactory, the parties have agreed they are in deadlock and the complaint was lodged within 3 months of deadlock being reached (and the member had informed the customer of this time limit); or
  - it has been at least 2 months since the complaint was lodged and the complainant has not been advised the matter is in deadlock.
45. "Deadlock" refers to the situation where a complaint reaches an impasse in the member's internal complaints scheme. The consumer is unsatisfied with how the complaint is being dealt with, but the member has not referred the complaint to an external dispute resolution scheme.
46. The timeframes proposed for when a complaint can be taken to the reserve scheme aim to balance a suitable period for the complainant and the FSP to resolve the matter; yet also to allow the complainant an avenue for alternative consideration of the complaint if he or she feels that the complaint is not being fairly processed.
47. It is also proposed to impose an overall time limit of two years for taking complaints to the reserve scheme from the time the complaint was first lodged with the member. The two year limit applies when a person has not been advised by the FSP (but later becomes aware through other means) that they can take a complaint to the reserve scheme. This allows for the situation when a consumer has made a complaint, and is advised over a prolonged period

of time that it is being dealt with (but with little progress) and is not aware that they could take the complaint to the reserve scheme. It is also proposed that the dispute resolver has the discretion to consider complaints outside of the time limit if it is considered there are special circumstances.

48. In line with the proposed Limitation Bill, it is proposed that the reserve scheme provides for a time limit for complaints of 6 years from the date that the consumer first became aware, or should reasonably have become aware, that they suffered the loss the complaint is about.
49. It is proposed that the reserve scheme will consider complaints that were lodged with the member on or after 1 May 2010, the scheduled date that the reserve scheme becomes established. This date allows time for prospective members of the reserve scheme to have internal procedures in place by the date a complaint may be taken to the reserve scheme (which requires complaints to be considered within members' internal procedures in the first instance).
50. It is also proposed that the reserve scheme allow members to refer complaints to the reserve scheme. While dispute resolution schemes are established primarily for the benefit of consumers, financial service providers may find an independent dispute resolution scheme useful for resolving, for example, a complaint that is complex and potentially contentious in a timely and independent manner. ASIC is proposing dual access for their guidelines for dispute resolution schemes.

Q3. Do you agree with the rule for when a complaint may be taken to the reserve scheme? If no, please give reasons and suggest alternatives.

Q4. Do you agree with time limit of two years for taking complaints to the reserve scheme from the time the complaint was first lodged with the member? If no, please give reasons and suggest alternatives.

Q5. Do you agree with the proposal to allow members to refer complaints to the reserve scheme? If no, please give reasons.

### ***Compensation cap***

51. In Australia, ASIC is currently consulting on a proposal to replace claim limits with compensation caps when approving external dispute resolution schemes in the financial sector. ASIC proposes to specify an amount for compensation caps, which will be adjusted every three years.
52. It is proposed that the reserve scheme have a compensation cap of \$100,000 or \$1,000 per week in the case of disability insurance that provides for regular payments to the insured. It is proposed the cap will be reviewed at least every five years at the time of the review of the reserve scheme.

53. A compensation cap is proposed rather than a claims limit. A claims limit states the maximum value of a claim that can be brought to the scheme. If the value of the transaction at the centre of the claim is above the limit, then the claim can not be lodged. A compensation cap means that consumer may bring a dispute to the scheme where the value of the transaction in question is above the cap; however, awards will only be made up to the cap. A consumer may waive the excess of their claim in order to have access to an external dispute resolution scheme.
54. Claim limits for other dispute resolution or ombudsman schemes are: Banking, \$200,000; Insurance & Savings, \$200,000; Disputes Tribunal proposed new limits, \$15,000 or \$20,000 with the consent of both parties; Motor Vehicles Disputes Tribunal proposed new limit \$100,000.
55. The proposed cap amount is in recognition that reserve scheme members can be from the full range of financial sector organisations and is high enough to cover most claims. However, as we are encouraging industry-led dispute resolution solutions, a cap deliberately set below the limit of the existing Banking Ombudsman and Insurance & Savings Ombudsman schemes of \$200,000 has been chosen to enable the industry-led schemes to have a point of difference when promoting these schemes. The proposed cap is higher than the proposed new limit of the Disputes Tribunal and the same as the proposed new limit of the Motor Vehicles Disputes Tribunal.

Q6. Do you agree with having a compensation cap rather than a claim limit? If no, please give reasons and suggest alternatives.

Q7. Do you agree with the caps of \$100,000 or \$1,000 per week in the case of disability insurance that provides for regular payments to the insured? If no, please give reasons and suggest alternatives.

## Requirements of members

56. All members of the reserve scheme will be required to meet certain basic membership requirements. It is proposed that members of the reserve scheme will need to follow some basic good practices regarding dispute resolution. These include having a process for dealing with complaints. For sole providers and small firms this may be in the form of a checklist. For larger providers, there should be a formal internal complaints resolution procedure. For providers who belong to an industry association, they might use the industry association for the equivalent of an internal complaints resolution procedure.
57. It is also proposed that members have an obligation to provide general information to their customers about the reserve scheme and access to it.
58. These obligations are akin to what you would expect members of a voluntary consumer dispute resolution scheme to impose upon members. It is important that the reserve scheme has such obligations and that members make a commitment to these as part of membership. Otherwise membership of the reserve scheme could be seen as only a requirement for registration without any commitment or intention to provide for consumer dispute resolution.



59. A further essential requirement on members of the reserve scheme is a duty to co-operate with the reserve scheme service provider when the service provider is undertaking an investigation. As a minimum, this includes providing information to the service provider so that a complaint can be properly considered and being available to answer questions to assist the investigation.
60. As required by section 63(m) of the Financial Service Providers Act, the reserve scheme will have a rule that members are bound to any resolution of a complaint concerning that member if the complainant accepts the resolution. As well, as required by section 63(n) of the Act, the reserve scheme will have a rule that a resolution of a complaint about a member of the scheme is binding on the complainant concerned, if the complainant accepts the resolution.

Q8. Are the requirements for applying to join the reserve scheme too difficult to meet, inadequate or about right? Please give reasons.

Q9. Is the requirement for all members to have some internal complaints resolution procedure too difficult to meet? If yes, please give reasons.

Q10. Are the terms for having membership terminated reasonable? If no, please give reasons.

## **Procedural requirements**

### ***Fair and informal proceedings***

61. In determining proposed rules for the consideration of complaints by the reserve scheme, the key underpinning principle is fairness. The proposals have also been heavily influenced by looking at the procedural rules in place in dispute resolution schemes in the telecommunications, energy and financial sectors.
62. It is proposed that the reserve scheme may use a range of techniques to resolve complaints from investigation to mediation to expert determination. This practice recognises that some complaints may be readily resolved by having an independent party look into the complaint, talk to both parties and suggest a way forward. Other complaints will be more complex and will require more major investigation and even expert determination. From experience in other dispute resolution schemes, most complaints are able to be dealt with without the need for expert determination. A more informal approach is also proposed in line with dispute resolution best practice.
63. The consideration of a complaint by the reserve scheme service provider must be fair to both the complainant and the FSP. Both parties must be treated according to natural justice and allowed to put forward their position and to be heard. Both parties need to be kept informed throughout the consideration of their case.
64. The reserve scheme will not be effective if consumers or FSPs consider they have not been treated fairly and with respect.



### ***Disclosure of information***

65. It is proposed that the reserve scheme rules provide that any confidential or sensitive information provided for the purpose of, or generated during the course of, resolving a complaint will be kept confidential. By providing for confidentiality, this protects the privacy interests of the consumer and the commercial interests of the FSP. This said, the rules will provide that information may be disclosed (in accordance with the Privacy Act 1993) to another FSP if their co-operation is required to resolve the complaint or to a licensing authority if there has been a series of complaints about a particular financial service provider or to a third party if the dispute resolver, complainant and member agrees. Such disclosure is to enable compliance with section 67 of the Financial Service Providers Act.

### ***Time limits***

66. It is proposed that the reserve scheme rules set out time limits for the scheme to respond to complainants. Time limits have been set to enable fair and courteous treatment of complainants and to allow reasonable time for the service provider to resolve the dispute in a considered and fair manner.

Q11. Are the time limits relating to advising receipt and acceptance of complaint and dispute resolution reasonable? If no, please give reasons and suggest alternatives.

### ***Alternative court action***

67. As required by section 63(o) of the Financial Service Providers Act, the reserve scheme rules will allow complainants to take alternative court action against the FSP member at any time, including if a complainant rejects the resolution. It is proposed that the reserve scheme will cease investigating the complaint in such a situation, unless the FSP asks for the investigation to be completed (as allowed by section 63(p) of the Act.

### **Settlement, recommendations and awards**

68. It is proposed that the reserve scheme rules provide for a stepped process for dispute resolution. This process is to encourage parties to settle (or withdraw) a dispute by agreement where possible. Often, complaints can be settled in the initial investigative stage through the mere clarification of information and positions by an independent person. If not, then the dispute resolver may assist the settlement process through conciliation and mediation. Disputes settled by agreement are more likely to provide outcomes that satisfy both parties and enable the relationship to continue amicably. It is the experience of dispute resolution schemes that the majority of disputes are settled by agreement.
69. If a settlement cannot be reached the proposed rules provide that the dispute resolver can make a determination. Determinations will be made based on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law. The dispute resolver will firstly make a recommendation which if accepted by both the complainant and member, will become full and final settlement. If the member concerned does not accept the recommendation, the dispute resolver will then make an award against the member, who is bound by the terms of the award.

Q12. Do you agree with this approach to dispute resolution? If no, please give reasons and suggest alternatives.

## Accessibility and promotion

70. If consumers are to obtain redress when required, they must be aware of the existence of the dispute resolution options and scheme relevant to them and then be able to access the service easily. Accordingly, it is proposed that the reserve scheme rules require that members must make their customers aware of their internal dispute resolution procedure and the reserve scheme. This proposed provision is also required by section 63 of the Financial Service Providers Act, which requires both approved and reserve schemes to promote their existence and service. It is expected that the reserve scheme will have printed and online material listing its members and providing information about its service. There will also be a 0800 number run by the Ministry of Consumer Affairs' contact centre to direct any queries or complaints to the appropriate member, dispute resolution scheme or disciplinary body.
71. Accessibility extends beyond information about complaints resolutions and the reserve scheme being available. It is proposed that access to the reserve scheme means that anyone should be able to access the service regardless of socio-economic, cultural, language, geographical or physical circumstances. Complaints to the reserve scheme will be free of charge (in accordance with section 63(l) of the Act) and will be able to be made through various channels – phone, email, internet or fax. In writing the scheme's proposed rules and processes the objective is that they be simple to understand and easy to use. Where required and possible, it is proposed the reserve scheme provider may offer assistance to complainants with special needs.

## Performance monitoring requirements

72. It is proposed that the reserve scheme rules include performance monitoring requirements. These have been developed to assist in fulfilling the principles of accountability, efficiency and effectiveness. The requirements are to monitor performance at several levels, including:
- By members and consumer interests to ensure that the reserve scheme provides an efficient and effective long-term solution for stakeholders;
  - By the advisory body to ensure the reserve scheme meets its objectives and functions;
  - By the advisory body to ensure that the service provider is providing the service to the required standard; and
  - By the Minister of Consumer Affairs to ensure that the reserve scheme meets the requirements of the Financial Service Providers Act.
73. The key features of the proposed monitoring and reporting arrangements include:
- Performance standards to be set by the advisory body and performance measured against them;
  - An Annual Report prepared by the reserve scheme covering a wide range of performance data, including member compliance;
  - Internal reviews of performance by the reserve scheme to be undertaken each year and reported in the Annual Report; and
  - Independent reviews to be undertaken every five years, with the terms of reference to be set by, and the independent reviewer appointed by, the advisory body in consultation with the Ministry of Consumer Affairs (as required by section 63(q) of the Act).

## 4. Proposed operating rules

Please feel free to comment on any aspect of the proposed operating rules.

### Purpose and Scope

<i>Purpose</i>	The purpose of the reserve scheme is to provide an independent, timely and cost-effective complaints resolution scheme that is in the long-term interests of finance sector consumers and financial service providers.
<i>Functions</i>	<p>The functions of the reserve scheme are:</p> <ul style="list-style-type: none"> <li>• To consider, at no cost to the complainant, complaints within its jurisdiction arising out of the provision within New Zealand of financial services by any member financial service provider to individuals and businesses that have no more than 19 employees;</li> <li>• Subject to specified limitations, to facilitate the satisfaction, settlement or withdrawal of such complaints whether by agreement, by making recommendations or awards or by such other means as seem expedient;</li> <li>• To promote and publicise the reserve scheme and to advise member FSPs on the development and maintenance of good complaint-handling practices; and</li> <li>• To cooperate and collaborate with approved dispute resolution schemes, government and other authorities, companies or persons on all matters relating to and affecting the settlement of complaints and any financial services business related to those complaints.</li> </ul>
<i>Binding rules</i>	The reserve scheme rules will be binding on member companies.
<i>Coverage of sector</i>	<p>Any FSP is eligible for membership to the reserve scheme (including those FSPs that have an approved dispute resolution scheme covering their sector of the finance industry), unless the FSP:</p> <ul style="list-style-type: none"> <li>• Fails to pay any entry fee or the annual levy the reserve scheme members' levy; or</li> <li>• Failed to take remedial action imposed on that provider by another dispute resolution scheme.</li> </ul>

<p><i>Complainants</i></p>	<p>The reserve scheme is available free of charge for use by:</p> <ul style="list-style-type: none"> <li>• Past or present customers of reserve scheme members; or</li> <li>• Consumers affected by the actions of reserve scheme members; and</li> <li>• Who are individuals or organisations that have no more than 19 full-time equivalent employees.</li> </ul> <p>With respect to organisations, they may or may not operate with the intention of making a pecuniary profit; therefore small businesses, small incorporated societies, community groups and some charitable societies are eligible.</p> <p>The reserve scheme may at its discretion consider a dispute from a complainant outside the eligibility criteria, for example, from a charitable organisation with 20 employees.</p> <p>Members may refer customers' complaints to the reserve scheme, for example, when deadlock has not been reached but the member wishes to have an independent determination made. A fee, which may be greater than any fee for customer-initiated complaints, will be charged.</p>
<p><i>Coverage of complaints</i></p>	<p>A complaint is an expression of dissatisfaction or concern about a service or a product provided by a member company for which the complainant expects redress (remedial action or compensation) and has not received satisfactory resolution.</p> <p>Complaints about members may be made regarding breaches of:</p> <ul style="list-style-type: none"> <li>• Contract</li> <li>• Statutory obligations</li> <li>• Industry codes</li> <li>• Any other matter that the customer considers has affected his or her fair treatment.</li> </ul> <p>While complaints about commercial decisions are not usually within jurisdiction of the reserve scheme (see limits on jurisdiction below), the reserve scheme may consider complaints about commercial judgement which involves an act or omission contrary to or not in accordance with a duty owed at law, in a code of practice, or pursuant to the terms (express or implied) of the contract between the scheme member and the consumer.</p> <p>A complainant is not required to frame their complaint within one of these categories in order to access the scheme.</p>

	<p>The complainant must have first raised their complaint with the internal complaints procedure of its FSP or a body representing the FSP or the individual FSP if a sole provider. The complaint will be accepted by the reserve scheme if:</p> <ul style="list-style-type: none"> <li>• The complainant has not accepted any observations made or conditions of settlement or satisfaction offered by the FSP; and</li> <li>• The complaint has been lodged within 3 months of the complainant being advised by the member that deadlock has been reached that the complaint may be taken to the reserve scheme within 3 months of being advised of deadlock; or</li> <li>• The complaint has been in consideration for at least 2 months and the member has not advised deadlock has been reached.</li> </ul> <p>If the complainant has not been advised by the member of the time limit relating to taking complaints to the reserve scheme, and then the complainant becomes aware of the reserve scheme and/or the time limit, the complaint can be lodged within 2 years of the complaint being originally lodged with the member. However, the dispute resolver has the discretion to consider complaints outside the 2 year timeframe if it is considered there are special circumstances.</p> <p>A complaint may be made to the reserve scheme at any time within 6 years from the date that the consumer first became aware, or should reasonably have become aware, that they suffered the loss the complaint is about.</p>
<p><i>Compensation cap</i></p>	<p>The reserve scheme will only consider complaints with compensation that do not exceed \$100,000 or \$1,000 per week in the case of disability insurance which provides for regular payments to the insured.</p> <p>This cap applies to the aggregate amount of the compensation comprised in the complaint and any related complaint. Therefore, a complainant may waive parts of their complaint so that the cap is not exceeded and the reserve scheme may be accessed.</p>
<p><i>Limits on jurisdiction</i></p>	<p>The reserve scheme will not consider complaints that:</p> <ul style="list-style-type: none"> <li>• Are the subject of action being taken by the same complainant in any court, tribunal or arbitrator, or any other independent or statutory complaints or conciliation body;</li> <li>• Relate to a member’s commercial practice or policy about lending, deposits or insurance, but this does not preclude the reserve scheme from considering complaints about administration in these matters;</li> <li>• Relate to government policy or the general level of fees allowable or levies payable under any relevant legislation.</li> </ul> <p>The reserve scheme does not have to consider complaints that:</p>

	<ul style="list-style-type: none"> <li>• Appear to be more appropriately dealt with by a court, under another independent or statutory complaints, conciliation or arbitration procedure;</li> <li>• Are frivolous and vexatious in manner or not being pursued in a reasonable manner;</li> <li>• It considers on the basis of facts presented by the complainant that the relevant member has made a reasonable offer in settlement of the complaint.</li> </ul>
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## Requirements of Members

Membership	
<i>Joining the reserve scheme</i>	<p>A prospective member must not have any outstanding obligations of remedial action imposed by another dispute resolution scheme.</p> <p>A prospective member with outstanding remedial actions within the allowed period for being carried out (20 working days) may become a provisional member. Membership will be confirmed once the obligation has been fulfilled.</p> <p>Prospective members must apply to be a member of the reserve scheme. The application will include:</p> <ul style="list-style-type: none"> <li>• Name of organisation, address of registered office and address of place of business;</li> <li>• Business status e.g. limited company, partnership, sole trader;</li> <li>• Reference number from Companies Office, Reserve Bank or Securities Commission;</li> <li>• Name of directors and senior management;</li> <li>• Description of the products and services provided;</li> <li>• Indication of business size e.g. number of employees and customers.</li> </ul> <p>The prospective member will undertake to:</p> <ul style="list-style-type: none"> <li>• Abide by the rules and carry out its obligations under the scheme;</li> <li>• Respond to and assist with enquiries and complaints in a constructive and timely manner; and</li> <li>• Pay any fees or levies the reserve scheme requires.</li> </ul> <p>A member of the reserve scheme cannot also be a member of an approved dispute resolution scheme</p> <p>Members of a dispute resolution scheme which has had its approval</p>

	<p>withdrawn will automatically become members of the reserve scheme.</p>
<p><i>Voluntary termination of membership</i></p>	<p>If a member wishes to leave the reserve scheme the member must provide at least one month's notice.</p> <p>Within one month of termination, all outstanding levies and fees must be paid and all outstanding remedial actions imposed must be completed. If there are any outstanding obligations after 20 working days, the member will be reported to the appropriate licensing authority and Registrar. Any outstanding obligations may affect qualification for membership of another dispute resolution scheme.</p>
<p><i>Enforced termination of membership</i></p>	<p>A member may have their membership terminated for breaching the rules of the reserve scheme.</p> <p>Unless otherwise stated, a member who has breached a rule or has not met their obligations will be given 20 working days to remedy the breach or meet the obligation. After 20 working days if the obligation has not been met or the breach remedied the member will be reported to the advisory body, and the reserve scheme service provider will notify the member and the relevant licensing authority that the member will be expelled from the reserve scheme within 10 working days if the required action has not been taken.</p>
<p><b>Internal complaints resolution procedure</b></p>	
<p><i>Internal complaints resolution procedure</i></p>	<p>All members are to have some avenue for customers to take their complaints before going to the reserve scheme. This may be an internal complaints resolution procedure or membership of a body representing their industry which provides a service equivalent to an internal complaints resolution service.</p> <p>An internal complaints procedure at a minimum should be a checklist which includes documenting the complaint received, acknowledging receipt of the complaint and documenting any conversations and correspondence of the attempt to resolve the complaint.</p> <p>From time to time the reserve scheme will provide guidelines to members on the good practice of internal complaints resolution.</p>
<p><i>Promotion of internal complaints procedure</i></p>	<p>All members are to make their customers aware of their internal complaints process.</p>
<p><b>Promotion of reserve scheme</b></p>	
	<p>All members are to promote the reserve scheme to their customers.</p> <p>Members must also inform complainants to their internal complaints service that if a complaint is unable to be resolved through the internal service the complainant may take the complaint, free of</p>

	charge, to the independent reserve scheme.
<b>Provision of information</b>	
	<p>A member may be required to provide to the service provider any information necessary to consider a complaint. The member must, as soon as possible, disclose the information requested by the decision-maker, unless:</p> <ul style="list-style-type: none"> <li>• That disclosure would place the member in breach of its confidentiality to a third person who has refused its consent to disclosure; or</li> <li>• That information is subject to legal or litigation privilege; or</li> <li>• The member does not have the information requested.</li> </ul>
<b>Abide by relevant code of practice</b>	
	All members must abide by any relevant codes of practice.
<b>Binding determinations</b>	
	A recommendation or award made by the dispute resolver is binding on the scheme member concerned if it has been accepted by the complainant.

## Procedural Requirements

<b>Exclusion from scheme</b>	
	The reserve scheme service provider may determine that a complaint is outside the jurisdiction of the scheme or otherwise excluded. The complainant must be advised with reasons why, within 5 working days of it becoming known that the complaint is excluded from the scheme.
<b>Informal proceedings</b>	
<i>Resolution techniques</i>	A range of techniques will be used to resolve complaints, including investigation, conciliation, mediation and arbitration and expert determination.
<i>Informal Approach</i>	<p>The reserve scheme service provider will resolve disputes in an inquisitorial and non-legalistic manner.</p> <p>Complainants do not need to attend formal meetings with either the decision-maker or the relevant member. Contact with the complainant to resolve the dispute may be by meetings, phone, mail or email.</p>



<b>Rights of parties to a complaint</b>	
<i>Natural justice</i>	Parties to a complaint are entitled to be treated according to natural justice. Each party shall have the opportunity to know and rebut the arguments of the other party.
<i>Investigation updates</i>	Parties to a complaint are entitled to be kept informed of the progress of the complaint.
<b>Disclosure of information to parties</b>	
<i>Complaint information</i>	<p>Any confidential or sensitive information provided for the purpose of dispute resolution will be kept confidential by the dispute resolver and reserve scheme service provider, subject to disclosure required by law, except with the consent of the party supplying the information.</p> <p>Information about a complaint may be disclosed (in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence) to:</p> <ul style="list-style-type: none"> <li>• Another FSP if there needs to be consultation because the complaint relates to more than one FSP, provided all the parties to the complaint are advised; and</li> <li>• The relevant licensing authority, if there is a material complaint or series of complaints about a particular licensed provider or class of licensed providers.</li> </ul> <p>Where a party to the complaint supplies confidential or sensitive information to the service provider in relation to a complaint and the complaint has been resolved or ceased to be considered, that information must be returned to that party as soon as is reasonably practicable, or with the party's permission will be destroyed.</p>
<i>Generated Information</i>	Parties to a complaint are required not to disclose information gained during the course of any resolution procedure to any third party, unless required by law to disclose such information or the dispute resolver, complainant and member have all agreed to do so.
<b>Time limits relating to complaints</b>	
<i>Receipt of complaint</i>	The reserve scheme service provider will acknowledge receipt of a complaint within 5 working days of it being received.
<i>Complaint outside jurisdiction</i>	The reserve scheme service provider will advise the complainant that his/her complaint is out of the scheme's jurisdiction and provide reasons, within 5 working days of the fact becoming known.
<i>Resolution</i>	The reserve scheme service provider will make best efforts to resolve

	the dispute within 40 working days from acceptance of the complaint. Where it is likely that the complaint will take significantly longer to resolve, the complainant should be informed as soon as the likelihood becomes known.
<b>Alternative court action</b>	
<i>By the consumer</i>	Complainants may take alternative court action against the member at any time, including if the complainant rejects the resolution. If the complainant takes alternative court action against the member, the reserve scheme will cease investigating the complaint.
<i>By the scheme member</i>	<p>After a complaint has been lodged, a reserve scheme member may only lodge legal proceedings in the following circumstances:</p> <p>a. To preserve their legal rights where a limitation period is about to expire, subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(i) while the reserve scheme service provider is dealing with the complaint, the member will not pursue the legal proceedings beyond the minimum necessary to preserve its rights; and</li> <li>(ii) if the complaint is resolved, whether by agreement or determination, the member will discontinue any aspect of the legal proceedings that is inconsistent with the agreement or determination.</li> </ul> <p>b. In test case situations.</p>

## Settlements, recommendations and awards

<b>Determinations</b>	
<i>Fair and reasonable determinations</i>	The dispute resolver will make determinations based on what is fair and reasonable, having regard to good industry practice, relevant industry codes of practice and the law.
<i>Settlement by agreement</i>	The complainant and member concerned, may by agreement between them, settle, partially settle or withdraw the complaint.
<i>Recommendation</i>	<p>If there is no such settlement, the dispute resolver may make a recommendation for settlement, partial settlement or withdrawal of the complaint. The dispute resolver must then:</p> <ul style="list-style-type: none"> <li>• Give the complainant and member concerned 15 working days notice of the intention to make a recommendation;</li> <li>• During the period of notice allow the complainant and member</li> </ul>

	<p>concerned to make further representations to the dispute resolver in respect of the complaint; and</p> <ul style="list-style-type: none"> <li>• If no agreement has been reached at the end of the period of notice, make a recommendation.</li> </ul> <p>If both the complainant and member concerned agree to the recommendation, the agreed recommendation will become full and final settlement of the complaint.</p>
<i>Awards</i>	<p>If the dispute resolver has made a recommendation which within 15 working days has been accepted by the complainant but not by the member concerned, the dispute resolver may make an award against the member.</p> <p>The member concerned is bound by the terms of the award and must pay any money sum, provide any service or take any action required to implement the terms of the award.</p>
<i>Reasons for recommendations and awards provided in writing</i>	<p>Recommendations and awards must be in writing and include a summary of the dispute resolver's reasons for making their determination.</p>
<i>Complainant may pursue alternative remedies</i>	<p>If the complainant elects not to accept a recommendation, then the complainant is entitled to pursue their remedies for any unresolved complaints or unresolved components of a complaint in any other forum and the member concerned is released from the dispute resolver's decisions in relation to that complaint.</p>
<b>Compensation</b>	
<i>Not punitive</i>	<p>The decision-maker cannot recommend or award punitive or exemplary damages.</p>
<i>Compensation cap</i>	<p>The aggregate compensation for related complaints brought by or on behalf of the same complainant cannot exceed \$100,000 or \$1,000 per week in the case of disability insurance which provides for regular payments to the insured.</p>
<i>Enforcement</i>	<p>A member who has agreed to a recommendation or has an award made against them must carry out the terms within 20 working days of the acceptance of the recommendation or award or within the period notified by the member (in the situation where the remedy takes longer than 20 working days to action). If the required remedial action has not been carried out, the member will be reported to the advisory body, and the reserve scheme service provider will notify the member and the relevant licensing authority that the member will be expelled from the reserve scheme within 10 working days if the required action has not been taken.</p>

## Promotion and accessibility

Promotion	
<i>Publicity</i>	<p>Members of the reserve scheme are required to disclose information about the reserve scheme to their customers. Disclosure is specifically required at the time a complaint is made to the member. Details which must be disclosed are:</p> <ul style="list-style-type: none"> <li>• When and how a dispute can be lodged;</li> <li>• Assistance available to complainants;</li> <li>• How the reserve scheme works;</li> <li>• The timeframes and other terms which are imposed on the procedure.</li> </ul>
<i>Multiple channels and targeted promotion</i>	<p>The reserve scheme may promote itself through multiple channels e.g. website, print, Citizens Advice Bureaux.</p> <p>Where there is a need because of special socio-economic, cultural, language, geographical or physical circumstances, specific groups may be targeted via appropriate channels or languages e.g. non-English newspapers.</p>
Accessibility	
<i>Free access</i>	<p>Both access to and complaints resolution by the reserve scheme will be free of charge.</p> <p>Complaints can be made to the reserve scheme by free phone number, a freepost service, fax, email or online submission form.</p>
<i>Assisted access</i>	<p>Where there is a need because of special circumstances e.g. disability or language, support will be provided to assist the complainant to access the service e.g. interpreter.</p>

## Miscellaneous requirements

Test cases	
	<p>If a reserve scheme member wishes a dispute to be treated as a test case, the member may at any time before an award is made, provide the reserve scheme service provider notice in writing containing:</p> <ul style="list-style-type: none"> <li>• A statement, with reasons, that in the opinion of the member the complaint involves or may involve:</li> </ul>

	<ul style="list-style-type: none"> <li>• an issue which may have important consequences for the business of the members or FSPs generally or</li> <li>• an important or novel point of law; and</li> <li>• An undertaking that, if within three months after the reserve scheme service provider’s receipt of the notice, that either the complainant or the member institutes Court proceedings in New Zealand against the other in respect of the complaint, the member will pay the complainant’s costs and disbursements of the proceedings.</li> </ul> <p>Providing the dispute resolver concurs with the member’s statement, he or she shall cease to consider the complaints and he or she shall inform the complainant in writing of the receipt of the notice, the date of its receipt and the effect of the notice upon the complaint.</p>
<b>Systemic issues and serious misconduct</b>	
<i>Systemic issues</i>	<p>The reserve scheme service provider will report all systemic issues (without identifying information) to, as appropriate, the advisory body and all members. In broad terms, a systemic issue is one which will have a material effect for individuals or small businesses beyond the parties to the complaint. Some examples of systemic issues are:</p> <ul style="list-style-type: none"> <li>• Poor disclosure or communications;</li> <li>• Administrative or technical errors;</li> <li>• Product flaws; and</li> <li>• Inaccurate interpretation of standard terms and conditions.</li> </ul>
<i>Serious misconduct</i>	<p>The reserve scheme service provider will report all serious misconduct to the relevant member and any relevant body. Serious misconduct is conduct which may be fraudulent, grossly negligent or involve wilful breaches of applicable laws or codes of practice.</p>
<b>Information sharing - education</b>	
	<p>Case studies of determinations , without any identifying information, may be provided to reserve scheme members, approved dispute resolution schemes and any interested bodies or stakeholders for the purposes of:</p> <ul style="list-style-type: none"> <li>• Educating reserve scheme members and consumers; and</li> <li>• Demonstrating consistency and fairness in decision-making.</li> </ul>

<b>Handling complaints about the reserve scheme</b>	
<i>Referred to advisory body</i>	The reserve scheme service provider will receive and refer complaints about its service and the operation of the scheme to the advisory body. This refers to only procedural matters and excludes complaints about determinations by a dispute resolver.
<i>Advisory body recommendations</i>	The reserve scheme service provider will respond to any recommendations of the advisory body in response to complaints about the operation of the service in a timely and appropriate manner.

## Performance Monitoring Requirements

<b>Performance Standards</b>	
<i>Standards to include</i>	The advisory body will set the performance standards (in accordance with normal industry levels) to be met by the service provider.
<i>Reports to the advisory body</i>	<p>The service provider will report regularly to the advisory body on the performance of the service against the standards.</p> <p>The report will also include the action to be taken to improve performance where service has been below the standard set.</p>
<b>Member Compliance</b>	
<i>Compliance monitoring</i>	Members will be monitored for their compliance to the reserve scheme rules e.g. was there any attempt to resolve the complaint internally first, was deadlock advised, has the settlement or award been actioned within the required time.
<i>Reporting on member compliance</i>	<p>Regular reports on member compliance will be provided to the advisory body, with advice on action proposed to be taken with the member where necessary.</p> <p>The reserve scheme's annual report will include reporting on member compliance.</p>
<b>Annual Reports</b>	
<i>Annual reports</i>	<p>An annual report will be provided to the Minister of Consumer Affairs by 30 September (within 3 months after the end of the scheme's financial year on 30 June).</p> <p>The Annual Report will contain:</p>

	<ul style="list-style-type: none"> <li>• Information about how the scheme works;</li> <li>• Results of the internal review;</li> <li>• Statistics on caseload, resolved cases, cases rejected on jurisdictional grounds, the amount of time taken to resolve complaints;</li> <li>• Results of feedback surveys;</li> <li>• Some examples of typical cases;</li> <li>• Information on compliance with the benchmark principles;</li> <li>• The list of members;</li> <li>• Information on performance standards;</li> <li>• The results of the independent review, if any independent review has been conducted that year;</li> <li>• Financial statements which sufficiently illustrate how the funding is being utilised;</li> <li>• A list of scheme members who committed substantial/material breaches of their membership obligations;</li> <li>• Any systemic issues arising from complaints, and how those issues have been dealt with; and</li> <li>• Information about new developments or key areas in which policy or education initiatives are required.</li> </ul> <p>The reserve scheme service provider will also respond to requests from the Minister for information additional to the Annual Report in a timely manner.</p>
<i>Annual report publicly available</i>	The reserve scheme's Annual Report will be available to the public on the reserve scheme's website, MCA's website and on request from MCA.
<b>Independent Review</b>	
<i>Scope of review</i>	<p>An independent review of the scheme will be undertaken to assess:</p> <ul style="list-style-type: none"> <li>• Whether the scheme is meeting the benchmark principles and rules set out in this document;</li> <li>• Whether the scheme is meeting the performance standards set out in this document;</li> <li>• Whether the performance standards set by the advisory body are adequate;</li> <li>• The quality of internal reviews; and</li> <li>• The effectiveness of the scheme's governance.</li> </ul>

	The review will also recommend any necessary or desirable changes to the reserve scheme operation and governance.
<i>Frequency of review</i>	There will be a review of the reserve scheme at least once every 5 years after the date of the scheme's commencement.
<i>Terms of reference</i>	The terms of reference for any review will be determined by the advisory body following consultation with the Ministry of Consumer Affairs.
<i>Reviewer</i>	An independent reviewer will be appointed by the advisory body following consultation with the Ministry of Consumer Affairs.
<i>Supply to the Minister</i>	The review report will be provided to the Minister of Consumer Affairs for presenting to the House of Representatives within 3 months of completion of the report.
<i>Independent review publicly available</i>	Copies of the independent review will be available to the public on the reserve scheme's website, MCA's website and on request from MCA.



## 5. Proposed organisation form and governance of the reserve scheme

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Please feel free to comment on any aspect of the proposed governance arrangements. Where we would like specific feedback, questions are given at the end of each section. You are not required to answer each and every question.

74. The proposed structures of the reserve scheme and their functions and relationships are outlined below.

### Minister of Consumer Affairs

75. The Minister of Consumer Affairs is responsible for Part 3 of the Financial Service Providers Act. The Minister's specific duties in relation to the reserve scheme are to:
- Recommend the rules about the functions of the reserve scheme;
  - Recommend the appointment of the reserve scheme service provider;
  - Recommend regulations on the levies and fees payable to the reserve scheme, including the amount, method of calculation and penalties or consequences of non-payment of levies;
  - Undertake consultation with the Ministers of Finance and Commerce on the appointment of the reserve scheme provider and the reserve scheme rules prior to making any recommendations;
  - Undertake consultation with persons who may be substantially affected by the reserve scheme rules and reserve scheme levies prior to making any recommendations;
  - Recommend the appointment of members to the reserve scheme advisory body;
  - Receive and consider annual reports of the reserve scheme; and
  - Undertake not later than 5 years after the commencement of the dispute resolution regime, a review of the dispute resolution regime with recommendations on any necessary or desirable amendments to the regime, and to table the review report in Parliament.

### Reserve Scheme Service Provider

76. It is intended that a Service Provider will perform the reserve scheme dispute resolution services as set out in the "Operating Rules". The Service Provider will be contracted by way of open tender. The contracting body for this service will be the Ministry of Economic Development/Ministry of Consumer Affairs and the service will be funded from levies. It is proposed that the reserve scheme operations will be overseen by an advisory body, which will also be funded through the levy.

Q13. Are there any issues associated with the reserve scheme being a contracted dispute resolution service? Please explain.

## Reserve Scheme Advisory Body

77. It is proposed that a reserve scheme advisory body is established to oversee the operations of the reserve scheme service.

### *Functions of the advisory body*

79. It is proposed that the functions of the advisory body will be to:

- In conjunction with the Ministry of Consumer Affairs, recommend a reserve scheme service provider to the Minister of Consumer Affairs;
- In conjunction with the Ministry of Consumer Affairs, recommend the total annual budget for the reserve scheme to the Minister of Consumer Affairs;
- Consider the business plan;
- Oversee and monitor the reserve scheme's operation and effectiveness;
- Review the service provider's performance;
- In conjunction with the Ministry of Consumer Affairs, consult with members on any proposed changes to the scheme rules and make recommendations to the Minister for his or her consideration;
- Provide guidance to the service provider on policy and procedural matters;
- Consider any proposals from the service provider concerning reserve scheme members' expulsion from the scheme for non-compliance with the scheme's rules;
- Receive and consider complaints about the operation and performance of the reserve scheme service. The advisory body may elect to consider the complaint itself or it may request an independent person to advise on the matter;
- Receive information about systemic industry issues and provide advice to industry, relevant government agencies or the Minister, as appropriate;
- Develop guidelines for members' internal dispute resolution procedures; and
- Not later than 5 years after the commencement of the reserve scheme, work with the Ministry of Consumer Affairs to facilitate a review of the scheme through an independent reviewer. This includes assisting with the terms of reference and selection of reviewer.

Q14. Are there any functions of the advisory body that should be added, deleted or amended? If yes, please comment.

### *Advisory body composition*

80. It is proposed that the advisory body will consist of 7 members with 3 members being appointed because of their governance experience and knowledge of or connections with the industry members and 3 members because they represent consumer interests, and an independent chair.

81. The appointments process will be administered by the Ministry of Consumer Affairs and members will be appointed by the Minister of Consumer Affairs. The process will be similar

to those conducted for other government appointed boards and advisory groups and will be conducted in a fair and transparent manner.

Q15. Do you agree with the composition of the advisory body? If no, please give reasons and suggest alternatives.

### *Foundation advisory body*

82. If as proposed, the advisory body will have a role in selecting the reserve scheme service provider, the advisory body will need to be in place by late this year. At this stage, it is unlikely that the membership of the reserve scheme would be known and therefore the financial sector representation needed on the advisory body. Therefore it is proposed that a foundation body be established which would operate for 12-18 months until the reserve scheme membership becomes clearer.

Q16. Do you agree that the reserve scheme should commence with a foundation advisory body? If no, please give reasons and suggest alternatives.

### *Advisory body secretariat*

83. The advisory body will require a secretariat to provide operational and administrative support to the advisory body, for example, monitoring the operations of the reserve scheme, developing and implementing standards for members' internal dispute resolution procedures and organising meetings. It is proposed that the secretariat will be funded by industry levies and be housed within the Ministry of Consumer Affairs.

## **The Ministry of Consumer Affairs**

84. The Ministry of Consumer Affairs will continue to deal with policy matters relating to the reserve scheme and the financial service providers dispute resolution regime. The Ministry will:

- Contract the reserve scheme service provider.
- Administer the advisory body appointment process;
- House and manage the advisory body secretariat;
- In consultation with industry and with assistance from the advisory body, recommend the levies and fees to the Minister to be provided for in regulations.
- On an ongoing basis, in consultation with the advisory body, attend to any policy matters relating to the reserve scheme;
- Work with the advisory body to facilitate an independent review of the reserve scheme, no later than five years after its commencement; and
- Undertake a review of the operation of Part 3 of the Financial Service Providers Act not later than 5 years after the commencement of the scheme. The review will include recommendations to the Minister on whether any amendments to the Act relating to the reserve scheme are necessary or desirable.

Q17. Are there any Ministry of Consumer Affairs functions relating to reserve scheme governance that should be added, deleted or amended? If yes, please comment.

Q18. Are there any issues in having the secretariat and contract manager/liaison person being housed and managed by the Ministry of Consumer Affairs? Please explain.

Q19. Do you agree with the overall governance arrangements for the reserve scheme? If no, please give reasons and suggest alternatives.

## 6. Process to establish the reserve dispute resolution scheme

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85. The process to establish the reserve scheme commences with consultation on the operating rules and governance arrangements proposed in this discussion paper. The feedback received will be taken into consideration when making recommendations to the Minister of Consumer Affairs on the final rules and governance of the reserve scheme.
86. The rules and governance arrangements will then be publicised and at about the same time the tender process to select a service provider for the reserve scheme will begin. Running concurrent with the tender process will be the process to appoint the foundation advisory body. The foundation advisory body will have a say in selecting the service provider and will work with them to fine tune the operating rules of the service.
87. After a clearer idea of the set-up and operating costs of the reserve scheme is determined with the service provider and advisory body, another, more targeted consultation process will be held to obtain feedback on the proposed funding and levies for the reserve scheme. The levies will be finalised after incorporating the feedback as required.
88. The reserve scheme is scheduled to be in place by May 2010.

### Indicative timetable

	By
Analysis of submissions	End August 2009
Report to Minister recommending the operating rules and governance arrangements of the reserve scheme	End September
Governance arrangements and operating rules of the reserve scheme finalised	End September
Tender to provide reserve scheme open. Advisory body appointment process started	Early October
Tender closes	Mid November
Advisory body appointed	Early December
Successful service provider announced	Early December
Levy system discussion paper released for consultation	December
Deadline for submissions to levy discussion paper	February 2010
Advisory body to commence working with MCA and service provider to establish reserve scheme procedures, rules, etc	February
Submissions analysed and levy regulations finalised	End March

Levy regulations implemented	April
Reserve scheme established	May 2010

### **Failure to receive satisfactory responses to the tender to provide dispute resolution services**

89. In the event that there are no applications that sufficiently meet the criteria for delivering the reserve scheme dispute resolution services, the Ministry of Consumer Affairs will consider courses of action which could include:

- Approaching a particular service provider who tendered to determine whether it could modify the service or terms sufficiently to reconsider acceptance of the tender; or
- Approaching an approved dispute resolution scheme to deliver a dispute resolution service for the reserve scheme as a separate operation; or
- Retendering for a service provider.

# Appendix one: Key sections of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

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## Section 52: Mandatory considerations for approval

1. When considering an application under [section 51](#), the Minister must have regard to the following considerations in light of the principles listed in subsection (2):
  - a. whether the scheme has an appropriate purpose:
  - b. whether the applicant has undertaken reasonable consultation on the scheme with members or potential members of the scheme, and persons (or their representatives) likely to be substantially affected by the scheme:
  - c. whether the applicant has adequate funding to enable it to operate the scheme according to the scheme's purpose and in accordance with the rules about the scheme:
  - d. whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
  - e. whether the scheme is capable of resolving disputes about the types of financial services provided by the members or potential members of the scheme:
  - f. the amounts of money that complaints lodged with the scheme may be about, and whether those amounts are reasonable and appropriate:
  - g. whether the rules about the scheme are adequate and comply with—
    - i. the principles listed in subsection (2); and
    - ii. the requirements of [section 63](#):
  - h. the number of currently approved dispute resolution schemes:
    - i. the types of financial service providers that may be members of currently approved dispute resolution schemes:
  - i. the proposed size of the scheme:
  - j. the types of financial service providers that may be potential members of the scheme:
  - k. any other applications for approval that have been made.
2. The principles are—
  - a. accessibility:
  - b. independence:
  - c. fairness:
  - d. accountability:
  - e. efficiency:
  - f. effectiveness.

## Section 63: Rules about approved dispute resolution scheme

The person responsible for an approved dispute resolution scheme must issue rules about that scheme, and those rules must provide for, or set out, the following:

- a. which types of financial service providers may be members of the scheme (all providers of that type must be eligible):
- b. how financial service providers become members of the scheme and how membership is terminated:
- c. that consumers and businesses that have no more than 19 full-time equivalent employees may make complaints for resolution by the scheme:
- d. how complaints about a member may be made for resolution by the scheme:
- e. a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member:
- f. that complaints about members must be investigated in a way that is consistent with the rules of natural justice:
- g. that complaints about members may be made relating to any of the following things:
  - i. breaches of contract by the member:
  - ii. breaches of statutory obligations by the member:
  - iii. breaches of industry codes by the member:
  - iv. any other matters provided for in the rules:
- h. that any information may be considered in relation to a complaint and any inquiry made that is fair and reasonable in the circumstances:
- i. the remedial action that the scheme can impose on a member to resolve a complaint (for example, a requirement to change systems or to compensate a complainant up to a certain amount stated in the rules):
- j. how remedial action may be enforced against the scheme's members, including after members have left the scheme:
- k. that a financial service provider who has not taken remedial action imposed on that provider by another approved dispute resolution scheme or the reserve scheme cannot join the scheme:
- l. that the scheme will not charge a fee to any complainant to investigate or resolve a complaint:
- m. that a resolution of a complaint about a member of the scheme is binding on the member concerned:
- n. that a resolution of a complaint about a member of the scheme is binding on the complainant concerned, if the complainant accepts the resolution:
- o. that the complainant may take alternative court action against the member at any time, including if the complainant rejects the resolution:
- p. that the scheme may cease investigating and resolving a complaint if the complainant takes alternative court action against the member:
- q. that an independent review of the scheme must occur at least once every 5 years after the date of the scheme's approval and must be supplied to the Minister within 3 months of completion:
- r. that the person responsible for the scheme and the scheme's members must inform the people referred to in paragraph (c) about the scheme.



## List of questions

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Q1. Are there any reserve scheme functions that should be added, deleted or amended? If yes, please comment.

Q2. Do you agree with the reserve scheme's definition of "complaint"? If no, please give reasons and suggest alternatives.

Q3. Do you agree with the rule for when a complaint may be taken to the reserve scheme? If no, please give reasons and suggest alternatives.

Q4. Do you agree with time limit of two years for taking complaints to the reserve scheme from the time the complaint was first lodged with the member? If no, please give reasons and suggest alternatives.

Q5. Do you agree with the proposal to allow members to refer complaints to the reserve scheme? If no, please give reasons.

Q6. Do you agree with having a compensation cap rather than a claim limit? If no, please give reasons and suggest alternatives.

Q7. Do you agree with the caps of \$100,000 or \$1,000 per week in the case of disability insurance that provides for regular payments to the insured? If no, please give reasons and suggest alternatives.

Q8. Are the requirements for applying to join the reserve scheme too difficult to meet, inadequate or about right? Please give reasons.

Q9. Is the requirement for all members to have some internal complaints resolution procedure too difficult to meet? If yes, please give reasons.

Q10. Are the terms for having membership terminated reasonable? If no, please give reasons.

Q11. Are the time limits relating to advising receipt and acceptance of complaint and dispute resolution reasonable? If no, please give reasons and suggest alternatives.

Q12. Do you agree with this approach to dispute resolution? If no, please give reasons and suggest alternatives.

Q13. Are there any issues associated with the reserve scheme being a contracted dispute resolution service? Please explain.

Q14. Are there any functions of the advisory body that should be added, deleted or amended? If yes, please comment.

Q15. Do you agree with the composition of the advisory body? If no, please give reasons and suggest alternatives.

Q16. Do you agree that the reserve scheme should commence with a foundation advisory body? If no, please give reasons and suggest alternatives.

Q17. Are there any Ministry of Consumer Affairs functions relating to reserve scheme governance that should be added, deleted or amended? If yes, please comment.

Q18. Are there any issues in having the secretariat and contract manager/liaison person being housed and managed by the Ministry of Consumer Affairs? Please explain.

Q19. Do you agree with the overall governance arrangements for the reserve scheme? If no, please give reasons and suggest alternatives.