



DEED GOVERNANCE GROUP

Operational Rule: Decision making and disputes management

Adopted 4 October 2016

Revisions adopted 12 April 2022

1. Introduction

- a) This operational rule describes the process that will be followed by the DGG in achieving consensus, as defined by the GIA Deed. The operational rule further describes the dispute management regime to be followed whether any such disputes arise from the decision-making process, or otherwise.
- b) All GIA Signatories agree to follow this operational rule whilst it remains in force, acting by and through their representatives on the DGG.
- c) This rule includes variations to consensus decision-making and the circumstances in which they apply, as permitted by clause 4.1.6 of the Deed.
- d) This rule was initially adopted in October 2016 and amended in March 2022.
- e) The GIA Secretariat will facilitate the steps set out in this operational rule.
- f) This is the 'Deemed Consensus Operational Rule' referred to in clause 7.2 of the GIA Deed.

2. Decision-making under the GIA deed

Consensus

- a) Decision-making under the GIA Deed is by consensus. As set out in the Deed, consensus means that no Signatory relevant to a decision disagrees; viz
Clause 7.2 - Consensus means that no Signatory relevant to a decision is opposed even if some who are entitled to participate in a decision do not do so (it is assumed those who do not participate are not opposed), or if some Signatories have reservations but are not opposed. Where consensus cannot be reached initially, the parties will follow the GIA deemed consensus operational rule.
- b) If a Signatory's nominated decision-maker (refer Deed clause 7.4) cannot attend a meeting, they may nominate an alternate party (individual or another party) party to represent their views and record their position on a decision. The Signatory shall inform the Secretariat of their alternate ahead of the meeting.
- c) Positions recorded by a duly notified alternate party have the same effect as if they were recorded by the Signatory's nominated decision-maker.

- d) If the Secretariat has not been informed of an alternate party, and a person in the meeting has asserted alternate party status, the Secretariat will verify the same with the Signatory before any impacted decisions are recorded in the meeting's minutes.

Where consensus cannot be reached

- e) During a Governance Group meeting, consensus is the preferred method of reaching decisions or agreement. If consensus is not reached within a reasonable time the decision may be put to a vote.
- f) Outside a Governance Group meeting, voting is the preferred method of reaching decisions or agreement.
- g) A vote may be called by the Chair of the Governance Group, the Secretariat's delegate or any two Signatory representatives, and
 - i) The decision or agreement is carried if 75% of those Signatories that vote, vote in favour. Abstention is not counted as a vote.
 - ii) If a vote is called for during a Governance Group meeting all Signatories must be given an opportunity to vote outside the meeting in accordance with sub-clause iii).
 - iii) If the vote is held outside a Governance Group meeting, all Signatories must be given notice of the proposed vote and the period for voting shall be two weeks, or another period if the Chair reasonably agrees. A Signatory may waive this notice requirement with respect to themselves, and
 - iv) Notice of a vote may be given personally or by email to the address notified by the Signatory to the Secretariat for the purpose of receiving notices. A properly addressed email is deemed delivered 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.
- h) For any decision or agreement to be carried MPI must be part of the consensus or vote in favour.
- i) Because all parties are given an opportunity to vote the concept of a quorum does not apply to decision making under this rule.
- j) Decisions or agreements reached by consensus or vote are joint decisions binding on all Signatories, including those Signatories which abstain, do not vote, or vote against.
- k) The regime set out in this rule does not apply to decisions about varying the GIA Deed, or for individual operational agreements that contain different decision-making provisions.

3. Disputes

- a) GIA Signatories recognise that disputes may arise from time to time between parties to the GIA Deed. In the spirit of partnership, all Signatory organisations and their individual representatives will work together in good faith to resolve such disputes effectively.
- b) This rule provides a detailed process to be followed in the event of a dispute so that the dispute is resolved effectively.

Process

- c) Where any dispute, disagreement, question, or difference arises between Signatories on any matter arising under or in respect of the Deed (a dispute) the Signatories who are directly involved in the dispute (“Parties”) will first ensure that decision-makers at an appropriate level in their organisations engage in meaningful dialogue to attempt to resolve the dispute. If the dispute cannot be resolved through this dialogue the following will apply:
- Any Party (the “**Initiator**”) may notify the other Party (or Parties) (the “**Recipient**”) in writing of the Dispute (the “**Dispute Notice**”). The GIA Secretariat is to be notified of all disputes contemporaneously. The Dispute Notice must specify the Initiator’s:
 - i) View of the facts of the Dispute;
 - ii) Position on the Dispute;
 - iii) Its suggestion for resolving the Dispute; and
 - iv) its representative authorised to resolve the Dispute.
 - The Recipient must respond in writing to the Dispute Notice within ten [10] Business Days of receipt. The Recipient’s response must specify its:
 - i) view of the facts of the Dispute;
 - ii) position on the Dispute;
 - iii) its suggestion for resolving the Dispute; and
 - iv) its representative authorised to resolve the Dispute.
 - The Parties will enter into negotiations to resolve the Dispute within ten [10] Business Days of the Initiator receiving the Recipient’s response.
 - Where the Parties are unable to negotiate a resolution to the Dispute within thirty [30] Business Days of the Recipient’s receipt of the Dispute Notice (or such other time as the Parties agree in writing), then:
 - i) Any Party may give notice that it wishes the dispute to be referred to mediation.
 - ii) The Parties will use best efforts to agree on a mediator and a fee for that mediator. However, if the Parties cannot so agree within five [5] Business Days, the mediator will be selected, and the mediator’s fee determined, by the President of the New Zealand Law Society (or his/her nominee).
 - iii) Where mediation does not resolve the Dispute within thirty [30] Business Days of mediation commencing, or if in the view of the mediator either Party fails to participate properly in the mediation, then without prejudice to each Party’s right to commence court proceedings the Parties may (but are not obliged to) agree to commence arbitration proceedings in accordance with the provisions of the Arbitration Act 1996.
- d) Pending resolution of the Dispute, the Parties will continue to perform their obligations under the GIA Deed as far as is practicable as if the Dispute had not arisen.

- e) Any costs or expenses of any mediator or arbitrator appointed under this rule will be paid by the Parties to the Dispute in equal shares unless recommended otherwise by the mediator or arbitrator and, if so recommended, will be paid in accordance with that recommendation. DGG expects that when considering and making such a recommendation, the mediator or arbitrator will take into account the principle that it is usually appropriate for cost and expenses to follow the outcome, and in particular that a Party initiating and pursuing a failed and unmeritorious Dispute should usually bear most or all the costs and expenses of all Parties in the Dispute.
- f) Except where a Signatory seeks urgent interlocutory relief, injunction, or specific performance,
- g) No Signatory may commence legal proceedings against another in respect of a dispute without the first-mentioned Signatory having followed the steps set out in this rule (including the completion of mediation, if instigated).

12 April 2022