

Financial markets in New Zealand

2021

Financial markets



3 partners
12 professionals

Specialists in:

Managed Funds and
Financial Products

Insurance

Financial Advice

Licensing and Regulation

Fintech

Ranked with:



"Dentons Kensington Swan 'provides excellent technical legal advice, while being commercially pragmatic'. The firm has a strong domestic and trans-Tasman client base, which includes large and boutique funds. It has also been closely involved in Financial Markets Conduct Act reforms, notably the proposed Financial Markets Services Legislation Amendment, and it frequently assists clients with innovative projects in the emerging fintech market. A significant proportion of the firm's work stems from Australia and other offshore markets."

Legal 500 Asia Pacific 2021



Key points about financial markets and services in New Zealand



The Financial Markets Conduct Act 2013 ('FMCA') and its regulations are the primary pieces of law regulating the offering of, and dealing in, financial products and financial services (including financial advice from March 2021) in New Zealand.



A license from the Financial Markets Authority ('FMA') is required for offering certain financial products, and for providing some types of financial advice to retail clients.



Unless an exclusion or exemption applies, there are numerous disclosure obligations and fair dealing obligations in the FMCA that all offerors of financial products and services must comply with.



From 15 March 2021, the Financial Services Legislation Amendment Act 2019 ('FSLAA') will introduce a new regulatory and licensing regime into the FMCA for the provision of financial advice and broking services, which will replace the existing Financial Advisers Act 2008. Under the new regime, all persons providing regulated financial advice must comply with statutory conduct duties, with additional duties and licensing obligations for financial advice providers.



Persons providing financial services and having a place of business in New Zealand will usually need to be registered on the Financial Service Providers Register ('FSPR') in accordance with the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ('FSPA'). Those dealing with retail clients will also generally need to join an approved dispute resolution scheme. Financial advice for retail clients in New Zealand can only be provided by persons who are registered to do so on the FSPR, and from 15 March 2021 can only be provided by persons licensed to do so under the FMCA.



The detail

Regulation of financial product offerings

A financial product is an equity security, a debt security, a managed investment product, or a derivative. These terms cover the offer of traditional investment products such as shares, bonds, investment syndicates, investment funds, and superannuation/KiwiSaver schemes.

The rules are designed to ensure that retail investors are given sufficient information to make informed investment decisions, and have protections around governance (particularly for managed investment products).

Who must be licensed under the FMCA?

- managed investment scheme managers
- derivatives issuers
- discretionary investment management service (DIMS) providers who offer their products or services to retail investors
- (from 15 March 2021) providers of regulated financial advice.

The licensing process is administered by the FMA. It involves a thorough and detailed assessment of the provider's business and systems as well as the capability and suitability of its directors and senior management.

Exceptions to licensing under the FMCA are precisely defined and include:

- offers to various categories of wholesale investors and wholesale clients
- offers through licensed intermediaries (which includes crowdfunding platforms and peer-to-peer lending providers)

- employee share purchase schemes and 'small' offers
- offers of financial products of a same class as a quoted financial product.

There are a number of more specific exemptions to licensing, such as for registered banks and for some incidental offers in New Zealand by overseas listed companies.

Product disclosure statements

Regulated offers of financial products must be made by way of a product disclosure statement ('PDS') which complies with the FMCA and its regulations. The PDS must be provided to each investor and lodged online with the Registrar of Financial Service Providers before the regulated offer can be made.

Restrictions on the content of a PDS, as well as general representations and advertisements relating to financial products, include prohibitions on:

- false or misleading conduct
- making unsubstantiated representations
- offering financial products in unsolicited meetings or telephone calls.

In addition, the Registrar must be supplied with all required information and documents for the online register of financial product offers. The regulations prescribe the information and reports which must be provided in those documents, including historical and in some cases prospective financial information.

Any issuer of a regulated product is required to keep accounting records and have annual financial statements, which must be lodged with the Registrar and audited by a qualified auditor.

Secondary markets for financial products

The PDS regime does not normally apply to the secondary markets for financial products (i.e. financial products that have previously been allotted), although there are some exceptions to this, such as where the original allotment was made for the purpose of a subsequent offer that is made within 12 months.

Dealings in financial products in the secondary markets require:

- the licensing of financial product markets (i.e. exchanges), and their supervision and regulation by the FMA
- the making of conduct rules for licensed markets operated by licensed market operators
- the continuous disclosure of material information by listed entities
- the continuous disclosure of substantial holdings (5% or more) and movements (of 1% or more) in listed entities
- the continuous disclosure of directors' and senior managers' dealings and 'relevant interests' in listed entities, irrespective of size
- prohibitions on, and remedies for, insider trading in quoted financial products issued by listed entities
- a market manipulation regime, which includes a prohibition on practices which give a false or misleading appearance with respect to the extent of active trading in, or the supply, demand, price, or value of, financial products traded on a licensed market
- rules relating to the trading of derivatives.

Regulation of financial services and financial advice

The relevant provisions of the FMCA have extraterritorial effect and cover services or advice provided from outside New Zealand into New Zealand.

The provision of 'financial services' is usually limited to financial service providers that are registered on the FSPR. A financial service includes (but is not limited to) any financial adviser service, brokering service, being a registered bank, acting as issuer or supervisor or regulated products, acting as an insurer, acting as a custodian, or being a licensed non-bank deposit taker. To be registered, a provider needs to participate in an approved dispute resolution scheme (if it provides services to retail clients), and must not be disqualified from registration.

Providers of financial services face disqualification from registration if a controlling owner, director, or senior manager:

- is an undischarged bankrupt
- is subject to a management banning order
- has been convicted of certain offences
- has convictions or banning orders under overseas law.

The FSPR is a publicly searchable electronic register.

Registration on the FSPR is generally only possible when the financial service provider is resident in New Zealand or has a place of business in New Zealand.

Registration can be stopped where the registration has, will have, or is likely to have, the effect of creating a false or misleading appearance of the extent of financial services provided in or from New Zealand, or of the extent of regulation by New Zealand law. An existing registered provider can be deregistered in the same circumstances.

From 15 March 2021 any person or entity providing financial advice to retail clients must be licensed by the FMA as a financial advice provider. A provider may give advice itself or through a financial adviser or a nominated representative. There is a two year transitional period from March 2020 under which a provider can continue to operate with a transitional licence, prior to requiring a full licence under the new regime.

Financial advice providers are required to make upfront disclosure of information to clients, especially about fees and remuneration.

Specific duties that apply to all persons providing regulated financial advice include:

- giving priority to clients' interests if there is a conflict between the interests of the client and the interests of the person giving the advice
- exercising the care, diligence, and skill that a prudent person engaged in the profession of giving regulated financial advice would exercise in the same circumstances
- not recommending that an individual acquire a financial product that contravenes the FMCA or its regulations
- making prescribed information available when required to do so by the regulations
- not making information available where it contains false or misleading statements.

Financial advice providers who have engaged advisers or nominated representatives face additional duties, including to:

- take all reasonable steps to ensure that all persons engaged to provide financial advice on the provider's behalf comply with the conduct duties
- implement processes and controls to, amongst other restrictions, limit the nature and scope of the advice given.

In each case, limited conditional exemptions are available for offshore-based providers.

Anti-money laundering and countering financing of terrorism ('AML/CFT').

Financial service providers operating in New Zealand also need to be aware of their obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

The AML/CFT regime requires overseas entities engaged in business in New Zealand to:

- undertake and prepare a written risk assessment of the risk of money laundering and the financing of terrorism that it may reasonably expect to face in the course of its business
- establish, implement, and maintain an AML/CFT compliance programme under the administration of a dedicated compliance officer
- have the risk assessment and compliance programme audited at least every two years
- carry out various levels of customer monitoring and due diligence, identity verification, and suspicious activity and prescribed transaction reporting.

Conduct of financial institutions regime

Following extensive conduct and culture reviews by the FMA and the Reserve Bank of New Zealand, the New Zealand government is currently working towards implementing a conduct licensing regime (though amendments to the FMCA), with a particular focus on banks, insurers, and licensed non-bank deposit takers. A range of duties will likely apply to financial institutions under the regime, including to obtain a conduct license, develop and comply with a fair conduct programme, and ensure relevant intermediaries comply with conduct obligations. Initial consultation on the proposals occurred in 2019 and 2020, although implementation is not expected until at least 2021.



How we can help you

For more
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Assisting with capital raisings, restructuring of capital holdings, dealing in financial products (including substantial product holder notification obligations), and wholesale investor validations.



Assisting fund managers with licensing and regulatory compliance and conduct obligations, product development, governing documents, outsourcing, ISDA arrangements, institutional investment arrangements, product administration, and disclosure.



Advising on regulatory reforms and compliance obligations for financial adviser services, including discretionary investment management services.



Advising both established providers and new entrants on the design, implementation, and regulation of new FinTech products and services, including crowd funding platforms, robo-advice services, integration of technology into the offer and administration of financial products and services, and other disruptive technologies.



Advising on prudential supervision and regulatory compliance obligations, as well as policy drafting, administration, and marketing.



Acting for supervisors of investment funds and proportionate ownership scheme offerings, and advising on custodial and corporate trustee arrangements.



Advising on AML/CFT obligations, including risk assessments, compliance programmes, suspicious transaction/activity reports, customer due diligence and identity verification requirements, and regulator inquiries.

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