

The Dentons logo is a white arrow pointing to the right, containing the word "DENTONS" in a bold, sans-serif font. The background of the entire page is a close-up photograph of green grass with water droplets, partially covered by a large purple shape in the upper left corner.

**DENTONS**

# **Financial markets in New Zealand**

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**December 2023**



# Financial markets in New Zealand



*Dentons has a highly recommended financial services team with expertise in managed funds, superannuation and advising offshore funds in relation to New Zealand investments. The team advises public bodies on the full range of investment funds law, as well as any reforms in financial markets regulation. It presents at the forefront of changes in financial markets regulation, with a significant presence in the regulation of wealth platforms and discretionary investment management services.*

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# 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) in New Zealand.



A license from the Financial Markets Authority (FMA) is required for offering certain financial products, and for providing 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.



Persons providing financial services and having a place of business in New Zealand will typically 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.





# Key points about financial markets and services in New Zealand



Financial advice for retail clients in New Zealand can only be provided by persons who are registered to do so on the FSPR and who are licensed to do so under the FMCA as Financial Advice Providers (FAP). All persons providing regulated financial advice must comply with statutory conduct duties under the FMCA.



From 1 April 2024, entities covered by the impending climate related disclosures regime (being climate reporting entities) must prepare and publish climate reports that are based on the Aotearoa New Zealand Climate Standards (Climate Standards) produced by the External Reporting Board (XRB).



From 31 March 2025, the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) will introduce a new regulatory and licensing regime into the FMCA for 'Financial Institutions', a category of which captures registered banks, licensed insurers, and licensed non-bank deposit takers (NBDTs), in relation to their conduct towards consumers. Additionally, Financial Institutions are required to comply with the supplemental regulations that prohibit certain target-based sales incentives, and regulate other types of incentives.

# 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
- providers of regulated financial advice
- from 31 March 2025 CoFI Financial Institutions will need to have a separate 'CoFI licence'.

The licensing process is administered by the FMA. For non-CoFI licences the process 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. The process by which the FMA will assess CoFI licence applications is considered below.

Exceptions to the requirement for 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 advice service, a regulated client money or property service (including a custodial service, being a registered bank or NBDT, acting as issuer or supervisor or regulated products,

acting as an insurer or acting as a custodian. 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.

Any person or entity providing financial advice to retail clients must be licensed by the FMA as a FAP. A provider may give advice itself or through a financial adviser or a nominated representative.

FAPs 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.

FAPs 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 (AML/CFT Act).

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.

In June 2023 a suite of regulations were released which will amend the operation of the AML/CFT regime. These regulations will have a staggered implementation beginning on 31 July 2023 and with the final regulation coming into force on 1 June 2025.

The impending regulations have a broad range of effects ranging from clarifying definitions contained within the AML/CFT Act, setting prescribed thresholds and introducing new prohibited actions.

## **Conduct of financial institutions regime**

Effective from 31 March 2025, the CoFI regime will introduce new conduct licensing requirements for registered banks, licensed insurers, and licensed NBDTs. These Financial institutions will be captured by the CoFI regime if they are in the business of providing one or more 'relevant services', being any of the following:

- acting as an insurer
- being a creditor under a consumer credit contract
- providing any of the relevant financial services referred to under the FSPA
- acting as an intermediary for any of the above services.

Financial Institutions will need to be licensed as such by the FMA in order to comply with CoFI. The regime establishes a 'fair conduct principle' which focuses on good customer outcomes and ensuring customers are, at all times, treated fairly.

Under CoFI, Financial Institutions are required to establish, implement and maintain an effective fair conduct programme (FCP) that is proportionate to the financial institution's business. A FCP must contain various policies, processes, systems and controls in place by the Financial Institution which ensures that the fair conduct principle is met.



The Financial Markets Conduct (Conduct of Financial Institutions) Amendment Regulations 2023 (CoFI Regulations) supplement CoFI and prohibit Financial Institutions and their intermediaries from giving 'prohibited incentives' to certain persons. The prohibited incentives ban any sales incentives which make reference to volume or value based targets to any customer-facing employees and to their immediate managers. Under the CoFI Regulations, intermediaries of Financial Institutions are also subject to the ban on giving prohibited incentives.

## **Climate-related disclosures (CRD) regime**

The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 (CRD Act) makes it mandatory for 'climate reporting entities', which are FMC reporting entities who are considered to have a higher level of public accountability to make certain climate-related disclosures. Climate reporting entities include:

- listed issuers that are large and not excluded
- registered banks that are large
- licensed insurers that are large
- credit unions that are large
- building societies that are large
- managers of registered schemes (other than a restricted scheme) who are large in certain circumstances.

The CRD regime will require these climate reporting entities to make mandatory climate-related disclosures for the financial reporting periods commencing on, or after, 1 January 2023, with the

first set of disclosures needing to be made in April 2024. The disclosures must be made in accordance with the Climate Standards published by the XRB. Despite the XRB establishing the Climate Standards, it is the FMA that will regulate compliance with the CRD Act.

From 27 October 2024, climate reporting entities will also be required to obtain independent assurance for specific aspects of their climate-related disclosures relating to their greenhouse gas emissions.



# How we can help you

- 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.

# How we can help you

- 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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