

Reprint
as at 29 April 2020



Financial Markets Conduct (Overseas Custodians— Assurance Engagement) Exemption Notice 2018

(LI 2018/9)

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2018.

2 Commencement

This notice comes into force on 24 February 2018.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

3 Revocation

This notice is revoked on the close of 23 February 2023.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
exempt period has the meaning given in clause 5(1)
NZ scheme property means scheme property of a registered scheme
overseas assurance engagement has the meaning given in clause 6(2)
Regulations means the Financial Markets Conduct Regulations 2014.
- (2) Any term or expression that is defined in the Financial Markets Conduct Act 2013 or the Regulations (including in regulations 87 and 88) and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption from assurance engagement requirement

- (1) A custodian is exempted from regulation 87(1) and (2) of the Regulations in relation to a relevant date for the custodian, and therefore the relevant period ending on that date (an **exempt period**), if—
 - (a) the custodian has its principal place of business outside New Zealand; and
 - (b) the relevant date is on or after 24 February 2018 but before 24 September 2022; and
 - (c) the custodian complies with clauses 6 and 7 in relation to that exempt period.
- (2) If a custodian is exempted under subclause (1) in relation to an exempt period, any sub-custodian appointed by the custodian is also exempted for the exempt period if the custodian has complied with clauses 6 and 7 in respect of all of the NZ scheme property held by the sub-custodian during the exempt period.

6 Overseas assurance engagement

- (1) For the purposes of clause 5(1)(c) in relation to an exempt period, a custodian must obtain 1 or more overseas assurance engagements that together cover all NZ scheme property held by the custodian, or any sub-custodian appointed by the custodian, during the exempt period.
- (2) An **overseas assurance engagement** means an assurance engagement that—
 - (a) is obtained in a jurisdiction—
 - (i) in which the custodian, or any sub-custodian appointed by the custodian, carried on business as a custodian during the exempt period; and
 - (ii) that is listed in the Schedule; and

- (b) is with an auditor who is registered or licensed to provide assurance engagements in that jurisdiction; and
 - (c) complies with the legal requirements and auditing and assurance standards in that jurisdiction; and
 - (d) includes the auditor's assessment of the custodian's processes, procedures, and controls relating to the custody of property, including the suitability of their design and their operating effectiveness.
- (3) Subclause (1) must be complied with within 4 months after the end of the exempt period.

7 Report to be given to relevant persons

- (1) For the purposes of clause 5(1)(c) in relation to an exempt period, a custodian must ensure that the following are given to each of the relevant persons:
- (a) a copy of the assurance report for the exempt period provided under each of the overseas assurance engagements referred to in clause 6(1); and
 - (b) for each report,—
 - (i) a statement of all of the custodial services provided by the custodian or any sub-custodian appointed by the custodian in relation to NZ scheme property that are covered by the report (if the report does not include a statement to that effect); and
 - (ii) to the extent that the report addresses matters that are the same as or similar to those set out in regulation 88 of the Regulations, information identifying where in the report those matters are addressed.
- (2) Subclause (1) must be complied with within 20 working days after the custodian obtains the assurance report for that period (or the last of them, if there is more than 1).

8 Time frame extended because of outbreak of COVID-19

- (1) This clause applies if a custodian that is exempted under clause 5 believes, on reasonable grounds, that it is not reasonably practicable for it to comply with clause 6 within 4 months after the end of the exempt period because of the outbreak of COVID-19.
- (2) The period for compliance in clause 6 is extended to 6 months after the end of the exempt period if the custodian gives to the FMA, within 4 months after the end of the exempt period, a written notice that states that the custodian is relying on this clause.
- (3) If subclause (2) would otherwise require the notice to be given to the FMA on or before 30 April 2020, the notice must instead be given on or before 15 May 2020.
- (4) This clause—

- (a) applies in relation to exempt periods that end on or after 31 December 2019 but before 1 August 2020; and
- (b) is revoked on the close of 29 April 2022.

Clause 8: inserted, on 29 April 2020, by clause 27 of the Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020 (LI 2020/71).

Schedule Overseas jurisdictions

cl 6(2)

Commonwealth of Australia
Canada
France
Luxembourg
Switzerland
The Netherlands
United Kingdom
United States of America

Dated at Auckland this 8th day of February 2018.

Nick Kynoch,
General Counsel.

Statement of reasons

Note: the following statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- **Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020**

This notice comes into force on 24 February 2018 and is revoked on 23 February 2023.

The notice exempts certain overseas custodians from the requirement in regulation 87 of the Financial Markets Conduct Regulations 2014 (the **Regulations**) to obtain an assurance engagement from a New Zealand auditor that covers the New Zealand assurance engagement matters specified in regulation 88 of the Regulations.

The exemption applies to an overseas custodian who obtains assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all of the

NZ scheme property of registered schemes held by the custodian or its sub-custodians. The exemption applies for the custodian's relevant periods ending on or after 24 February 2018 but before 24 September 2022.

A similar exemption was granted for 1 year by the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2017. This notice continues the policy of that exemption until September 2022 and adds Switzerland and the Netherlands as recognised overseas jurisdictions.

The Financial Markets Authority (the **FMA**), after satisfying itself of the matters set out in section 557 of the Financial Markets Conduct Act 2013, considers it appropriate to grant this exemption because—

- the exemption applies only to custodians who have their principal place of business outside New Zealand and who obtain assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all of the scheme property of registered schemes held by the custodian or its sub-custodians:
- the exemption applies only in relation to jurisdictions in which custodians are required to obtain assurance engagements from auditors who are subject to auditing standards and oversight that are broadly equivalent to those applying in New Zealand. The FMA is therefore confident of the comparability and quality of those overseas assurance engagements:
- if a custodian obtains an assurance engagement that is prepared by an auditor who is registered or licensed to provide assurance engagements in one of those jurisdictions and complies with the regulatory requirements in that jurisdiction, the costs associated with requiring the custodian to also obtain an assurance engagement prepared by a New Zealand auditor in compliance with regulations 87 and 88 of the Regulations would outweigh the benefits to investors and be unnecessary compliance costs:
- the securities regulators in the jurisdictions listed in the *Schedule* are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, and the audit regulators in those jurisdictions are signatories to the International Forum of Independent Audit Regulators Multilateral Memorandum of Understanding Concerning Co-operation in the Exchange of Information for Audit Oversight. The FMA will therefore be able to seek assistance from relevant regulators if enforcement issues arise:
- the FMA is satisfied that granting the exemption is desirable in order to promote a number of purposes of the Financial Markets Conduct Act 2013—specifically, it will ensure appropriate governance arrangements that allow for effective monitoring, avoid unnecessary compliance costs, and promote flexibility in financial markets:
- the exemption is limited to overseas custodians obtaining assurance engagements from overseas auditors who are subject to audit oversight that is broadly

equivalent to that in New Zealand. The FMA is therefore satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to it.

Note: the preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- **Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 12 February 2018.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2018 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020 (LI 2020/71): clause 27