



Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2021

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.

Contents

		Page
1	Title	1
2	Commencement	1
3	Revocation	1
4	Application	1
5	Interpretation	2
6	Exemptions	3
7	Conditions	3
8	Further condition if overseas GAAP is not equivalent to IFRS or US GAAP	5
9	Further condition if overseas GAAP is not equivalent to IFRS	5

Notice

- 1 Title**
This notice is the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2021.
- 2 Commencement**
This notice comes into force on 4 November 2021.
- 3 Revocation**
This notice is revoked on the close of 3 November 2026.
- 4 Application**
An exemption granted by this notice applies to the following accounting periods of an exempt issuer:

- (a) an accounting period of the issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

5 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

approved auditor, in relation to an exempt issuer, means an accountant who is qualified under the law of the home jurisdiction to give an opinion as to whether financial statements or group financial statements comply with an overseas GAAP required or permitted in that jurisdiction

Australian auditor means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements or group financial statements comply with Australian equivalents to International Financial Reporting Standards

exempt issuer means an overseas person that is a licensed insurer or a registered bank

home jurisdiction, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

IFRS means—

- (a) International Financial Reporting Standards, International Accounting Standards, and Standing Interpretations Committee interpretations that have been issued, endorsed, or adopted by the International Accounting Standards Board in accordance with the constitution of the International Financial Reporting Standards Foundation; and
- (b) final interpretations by the International Financial Reporting Standards Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

New Zealand business, in relation to an exempt issuer, means,—

- (a) if the exempt issuer has 1 or more subsidiaries, the New Zealand business of the exempt issuer's group (as defined in section 6(1) of the Act);
- (b) if the exempt issuer has no subsidiaries, the exempt issuer's New Zealand business

overseas GAAP, in relation to—

- (a) an exempt issuer that is a licensed insurer that is incorporated in the United States of America, means—
 - (i) US GAAP; or
 - (ii) statutory accounting principles issued by the National Association of Insurance Commissioners (US);
- (b) any other exempt issuer, means generally accepted accounting practice or principles that is or are required or permitted in the home jurisdiction

overseas person, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

Regulations means the Financial Markets Conduct Regulations 2014

US GAAP means generally accepted accounting principles that are required or permitted in the United States of America.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

6 Exemptions

Every exempt issuer is exempted from—

- (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
- (b) sections 460 and 461 of the Act to the extent that those sections require the exempt issuer to ensure that its financial statements, or group financial statements,—
 - (i) comply with generally accepted accounting practice; and
 - (ii) are dated and signed in accordance with section 460(1)(b) or 461(1)(b).

7 Conditions

The exemptions in clause 6 are subject to the following conditions:

- (a) the exempt issuer, in relation to the financial statements or group financial statements prepared under section 460 or 461 of the Act, must comply with the law and regulatory requirements of the home jurisdiction that relate to the preparation, content, audit, and public filing of those statements and, in particular, the exempt issuer must ensure that—
 - (i) those statements comply with overseas GAAP; and
 - (ii) those statements are audited by an approved auditor; and

- (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the issuer to ensure that—
 - (i) the financial statements or group financial statements prepared under section 460 or 461 of the Act comply with paragraph (a)(i); and
 - (ii) the New Zealand business financial statements prepared under paragraph (c) (if any) comply with generally accepted accounting practice; and
- (c) the financial statements or group financial statements delivered for lodgement under section 461H of the Act must be accompanied by financial statements for the New Zealand business (if any), and the exempt issuer must ensure that—
 - (i) those statements are prepared in accordance with generally accepted accounting practice; and
 - (ii) those statements are audited by an approved auditor, an Australian auditor, or a qualified auditor (the **auditor**) (but *see* clause 9); and
 - (iii) an audit report is prepared by the auditor in respect of that audit; and
 - (iv) the auditor complies with all applicable auditing and assurance standards when carrying out the audit and preparing the audit report; and
- (d) if an auditor's report referred to in paragraph (a)(iii) or (c)(iii) indicates that the requirements referred to in paragraph (a) or (c) have not been complied with in any respect, the exempt issuer must, within 7 working days after the report is signed, provide a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and
- (e) the financial statements or group financial statements delivered for lodgement under section 461H of the Act must—
 - (i) be accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period to which the statements relate; and
 - (ii) be in English or accompanied by an accurate English translation; and
- (f) a governmental body for securities regulation in the home jurisdiction must be a full signatory to the International Organization of Securities

Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

8 Further condition if overseas GAAP is not equivalent to IFRS or US GAAP

- (1) This clause applies if the overseas GAAP referred to in clause 7(a)(i) is not equivalent to IFRS or US GAAP.
- (2) The written notification required under clause 7(e)(i) must include a statement in the following form:

“*[Name of exempt issuer]* is an overseas *[licensed insurer/registered bank]*. These *[financial statements/group financial statements]* have been prepared in accordance with the financial reporting requirements in the home jurisdiction of *[name of exempt issuer]*. Those requirements—

- (a) are not equivalent to International Financial Reporting Standards (IFRS); and
- (b) as such, are materially different to financial reporting requirements in New Zealand.

As a result, these financial statements may not be comparable in all material respects to financial statements prepared by a *[licensed insurer/registered bank]* in accordance with New Zealand law.”

9 Further condition if overseas GAAP is not equivalent to IFRS

- (1) This clause applies if the overseas GAAP referred to in clause 7(a)(i) is not equivalent to IFRS.
- (2) Despite clause 7(c)(ii), the New Zealand business financial statements prepared under clause 7(c) (if any) must be audited by an Australian auditor or a qualified auditor.

Dated at Wellington this 19th day of October 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 4 November 2021 and is revoked on the close of 3 November 2026. The notice continues, with minor changes, the exemptions granted under the Financial Markets Conduct (Overseas Registered Banks and Licensed

Insurers) Exemption Notice 2020 (the **2020 notice**), which is revoked on the close of 3 November 2021.

This notice applies to overseas banks that are registered and overseas insurers that are licensed by the Reserve Bank of New Zealand (the **Reserve Bank**).

This notice exempts overseas registered banks and overseas licensed insurers from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**):

- section 455(1)(c) (which requires an FMC reporting entity to keep accounting records that will enable it to ensure that its financial statements comply with generally accepted accounting practice);
- sections 460 and 461 to the extent that those sections require the financial statements that are prepared to comply with New Zealand generally accepted accounting practice (**NZ GAAP**) and to be dated and signed by 2 directors (or, if the entity has only 1 director, by that director);
- section 461B (which relates to financial statements for the New Zealand business);
- sections 461D and 461G (which relate to auditing).

The exemptions are subject to conditions. These include requirements that—

- the entities prepare financial statements that comply with the laws and regulatory requirements of their home jurisdiction;
- the home jurisdiction, through a securities regulator in that jurisdiction, be a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This would allow the Financial Markets Authority (the **FMA**) to seek the assistance of the equivalent authority in the home jurisdiction should enforcement issues arise.

The main effects of the exemptions for entities relying on them are as follows:

Preparation of financial statements

- rather than complying with NZ GAAP, the financial statements that are prepared will comply with the overseas generally accepted accounting practice or principles that is or are required or permitted in the home jurisdiction or, in the case of United States insurers, with United States statutory accounting principles (**overseas GAAP**):

Audit requirements

- those financial statements will be audited by an auditor who is qualified under the laws of the home jurisdiction (an **overseas approved auditor**):
- if the entity has a New Zealand business, those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with NZ GAAP:
- those New Zealand business financial statements will be audited by a qualified auditor (as that term is defined in the Act), an auditor who is qualified under

the laws of Australia, or an overseas approved auditor, and that audit must be carried out in accordance with New Zealand auditing and assurance standards:

- however, if the applicable overseas GAAP is not considered to be equivalent to IFRS, the auditor of the New Zealand business financial statements may not be an overseas approved auditor:

Additional disclosure requirements

- if the applicable overseas GAAP is not considered to be equivalent to IFRS or US GAAP, additional disclosure requirements apply.

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the Reserve Bank is required to assess the financial reporting and audit requirements of the home jurisdiction of any overseas bank or insurer seeking registration or licensing in New Zealand. In these circumstances, the FMA is satisfied that the financial reporting and audit requirements of the home jurisdiction will provide sufficient and appropriate information to the Reserve Bank for it to undertake its prudential regulation of these entities and to investors for them to make investment decisions:
- the securities regulators in the home jurisdictions of the overseas entities that will rely on the notice are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. The FMA will therefore be able to seek assistance from relevant regulators if compliance concerns arise:
- the costs associated with an entity having to prepare and audit financial statements in accordance with the requirements of a home jurisdiction, in addition to the costs associated with preparing NZ GAAP-compliant financial statements audited by a New Zealand qualified auditor, would outweigh the benefits to investors in having access to financial statements prepared according to NZ GAAP rather than overseas GAAP:
- for these reasons, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act. Specifically, the exemptions should avoid unnecessary compliance costs and promote flexibility in the financial markets:
- the exemptions only address the particular difficulties experienced by entities that are overseas registered banks or licensed insurers. Given the limited application of the exemptions and that investors will still have access to financial statements, lodged in New Zealand, that meet financial reporting and audit requirements in reputable jurisdictions, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

**Financial Markets Conduct (Overseas Registered Banks
and Licensed Insurers) Exemption Notice 2021**

2021/324

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 22 October 2021.
This notice is administered by the Financial Markets Authority.

Wellington, New Zealand:

Published under the authority of the New Zealand Government—2021