

Reprint
as at 1 July 2015



Auditor Regulation Amendment Act 2014

Public Act 2014 No 62
Date of assent 6 November 2014
Commencement see section 2

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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 Act is administered by the Ministry of Business, Innovation, and Employment.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Auditor Regulation Amendment Act 2014.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made bringing different provisions into force on different dates.
- (2) To the extent that it has not previously been brought into force under subsection (1), the rest of this Act comes into force on 1 April 2017.

Section 2(1): this Act brought into force, on 1 July 2015, by the Auditor Regulation Amendment Act 2014 Commencement Order 2015 (LI 2015/115).

3 Principal Act

This Act amends the Auditor Regulation Act 2011 (the **principal Act**).

4 Section 6 amended (Interpretation)

- (1) In section 6(1), definition of **engagement partner**, after “**partner**”, insert “**or director**”.
- (2) In section 6(1), definition of **engagement partner**, after “means the partner”, insert “, director,”.
- (3) In section 6(1), definition of **limited partnership**, replace paragraph (b) with:
 - (b) an overseas limited partnership within the meaning of the Limited Partnerships Act 2008

- (4) In section 6(1), replace the definition of **overseas audit firm** with:
- overseas audit firm** means an audit firm that is—
- (a) a partnership where a majority of the partners are ordinarily resident in a country, state, or territory outside New Zealand; or
 - (b) an overseas company
- (5) In section 6(1), insert in their appropriate alphabetical order:
- company** has the same meaning as in section 2(1) of the Companies Act 1993
- overseas company** means a body corporate that is incorporated outside New Zealand

5 Section 9 amended (Audit firms engaged or appointed to act as auditor in respect of FMC audits must be registered)

- (1) In section 9(1), delete “a partnership that is”.
- (2) Replace section 9(2) with:
 - (2) If an audit firm is engaged or appointed to act as the auditor in respect of an FMC audit, the audit firm must ensure that each engagement partner or director is a licensed auditor whose licence authorises him or her to act as the auditor in respect of that kind of FMC audit.
 - (2A) If an audit firm that is a partnership is engaged or appointed to act as the auditor in respect of an FMC audit, each partner of the audit firm, from time to time, who is a licensed auditor and whose licence authorises him or her to act as the auditor in respect of that kind of FMC audit must, for the purposes of this Act, be treated as acting as the auditor in respect of the FMC audit.
 - (2B) If an audit firm that is a company or an overseas company is engaged or appointed to act as the auditor in respect of an FMC audit, the company or overseas company must, for the purposes of this Act, be treated as acting as the auditor in respect of the FMC audit.
 - (2C) Nothing in this section or section 10 limits the power of the Institute or any other accredited body to make, maintain, and enforce any rules relating to the investigation and hearing of complaints against, and disciplining of, a member or former member in connection with the carrying out of an audit (for example, if a company is treated as acting as the auditor, a director or an employee of that company may be subject to disciplinary action in respect of the audit).
- (3) In section 9(3), replace “(2)(b)” with “(2)”.

6 Section 10 amended (Partners who are responsible if FMC audit not carried out in accordance with requirements)

- (1) In the heading to section 10, after “**Partners**”, insert “**or directors**”.
- (2) In section 10(2), replace “Despite section 9(2)(a), a partner” with “Despite section 9(2A) and (2B), a partner or director”.

- (3) In section 10(2), replace “only if” with “if, and only if.”
- (4) In section 10(2)(a), replace “engagement partner” with “engagement partner or director”.
- (5) After section 10(2), insert:
- (3) For the purposes of subsection (2), sections 20(1)(c) and 21(1)(b) apply as if the FMC audit is carried out by the partner or director to which subsection (2)(a), (b), or (c) applies.

7 Section 25 amended (Accredited body may authorise registration of audit firms)

Replace section 25(1) with:

- (1) An accredited body may, on an application made by an audit firm that is a partnership or a company, authorise the Registrar to register the audit firm if the accredited body is satisfied that,—
 - (a) in the case of a partnership,—
 - (i) 1 or more of the partners of the firm are licensed auditors; and
 - (ii) the firm meets the prescribed minimum standards;
 - (b) in the case of a company,—
 - (i) 1 or more of the directors of the firm are licensed auditors; and
 - (ii) the firm meets the prescribed minimum standards; and
 - (iii) the firm satisfies the requirements prescribed for the purposes of this subparagraph.

8 Section 26 amended (FMA may authorise registration of overseas audit firms)

Replace section 26(1)(a) with:

- (a) in the case of a partnership, 1 or more of the partners of the firm are licensed auditors; and
- (ab) in the case of an overseas company,—
 - (i) 1 or more of the directors of the firm are licensed auditors; and
 - (ii) the firm is eligible to act as an auditor in the country, State, or territory in which it is incorporated; and
 - (iii) the firm is required, under the law or the regulatory requirements of the country, State, or territory in which it is incorporated, to comply with requirements for maintaining the firm’s independence as an auditor, and that those requirements are equivalent to, or as satisfactory as, the requirements that apply to New Zealand auditors; and
 - (iv) the firm satisfies the requirements prescribed for the purposes of this subparagraph; and

9 Section 29 amended (Cancellation of registration)

- (1) In the heading to section 29, after “Cancellation”, insert “or suspension”.
- (2) In section 29(1), after “cancel”, insert “or suspend”.
- (3) Replace section 29(1)(a) with:
 - (a) no longer has at least 1 partner or director who is a licensed auditor; or
- (4) After section 29(1)(c), insert:
 - (ca) no longer satisfies the requirements prescribed for the purposes of section 25(1)(b)(iii) or 26(1)(ab)(iv); or
 - (cb) no longer satisfies the requirements of section 26(1)(ab)(ii) or (iii) (in the case of an overseas company); or
- (5) Replace section 29(2) with:
 - (2) A suspension under subsection (1) is for the period that the relevant body thinks fit or until the audit firm satisfies any requirements specified by the relevant body (and that period or those requirements must be specified in the notice given under subsection (1)).
 - (3) After receiving a notification under subsection (1), the Registrar must—
 - (a) cancel or suspend the registration of the audit firm; and
 - (b) give written notice of the cancellation or suspension to the audit firm.
 - (4) The Registrar must, after receiving notification of an order under subpart 7 of the cancellation or suspension of the registration of an audit firm, cancel or suspend the registration of the audit firm.
 - (5) The registration of an audit firm may also be treated as cancelled or suspended under section 61(6).

10 Section 30 amended (Relevant body must give notice before exercising power)

In section 30(a), after “partners”, insert “or directors”.

11 Section 31 amended (Appeals in respect of registration matters)

In section 31(1)(c), after “cancel”, insert “or suspend”.

12 Section 34 amended (Minimum standards for registration of audit firm)

After section 34(2), insert:

- (3) Nothing in regulations made under section 84(1)(ca) limits the FMA’s power to prescribe minimum standards for the registration of an audit firm.

13 Section 40 amended (Purpose of register)

In section 40(a)(ii), after “partnership”, insert “, a company, or an overseas company”.

14 Section 41 amended (Contents of register)

In section 41(2)(d), after “partners”, insert “, directors,”.

15 Section 61 amended (Effect of cancellation or suspension on licences issued and registrations authorised by accredited body or former accredited body)

Replace section 61(6) with:

- (6) If A was the relevant body under subpart 2 in respect of a registered audit firm,—
- (a) the registration of the audit firm must be treated as cancelled if A’s accreditation is cancelled under section 59; and
 - (b) the registration of the audit firm must be treated as suspended during the period in which A’s accreditation is suspended (if A’s accreditation is suspended under section 59); but
 - (c) the FMA may order that paragraph (a) or (b) does not apply in respect of 1 or more classes of audit firm.
- (7) If 1 or more classes of audit firm continue to be registered as the result of an order under subsection (6)(c), the FMA may order, on the terms and conditions that it thinks fit, that another accredited body may act as the relevant body under subpart 2 (and that other accredited body may be the FMA acting under section 91).

16 Section 63 amended (Appeals)

- (1) Replace section 63(1)(e) with:

(e) to decline to make an order under section 61(2) or (6)(c) in respect of the person’s licence or registration.

- (2) After section 63(2), insert:

- (3) The High Court may make an order, or otherwise exercise a power, on an appeal under subsection (1)(e) only in respect of 1 or more of the parties to the proceedings.

17 Section 71 amended (Consequences of failing to comply with directions)

In section 71(1)(c), after “cancel”, insert “or suspend”.

18 Section 75 amended (FMA may start or take over investigation or investigate in conjunction with accredited body)

Replace section 75(3) with:

- (3) In this subpart, an **investigation** is an investigation into the conduct of either or both of the following:
- (a) a licensed auditor in respect of 1 or more FMC audits (whether he or she holds a licence issued under section 11 or 12):

- (b) a registered audit firm in respect of 1 or more FMC audits (whether the firm's registration is authorised under section 25 or 26).

19 Section 77 amended (Accredited body must give reasonable assistance)

Replace section 77(1) with:

- (1) An accredited body must, in respect of the following kinds of investigation, give all reasonable assistance to the FMA to enable the investigation to be carried out:
 - (a) an investigation by the FMA involving a member of the accredited body;
 - (b) an investigation by the FMA involving a registered audit firm that has 1 or more partners, directors, or employees who are members of the accredited body.

20 Section 78 amended (Disciplinary powers of FMA)

Replace section 78(1) to (3) with:

- (1) The FMA may, after acting under section 75, make 1 or more of the orders specified in subsection (2) if it is satisfied on reasonable grounds that 1 or more FMC audits carried out by the licensed auditor (**A**) or registered audit firm (**B**) (or both) are not being, or have not been, carried out—
 - (a) in accordance with—
 - (i) the requirements imposed by or under this Act or any other enactments that relate to the conduct of FMC audits; or
 - (ii) auditing and assurance standards; or
 - (b) with reasonable care, diligence, and skill.
- (2) The orders are—
 - (a) an order that A's licence be cancelled;
 - (b) an order that B's registration be cancelled;
 - (c) an order that the person whose licence or registration is cancelled may not apply to be relicensed or reregistered, whether with the same or a different accredited body, before the expiry of a specified period;
 - (d) an order that A's licence be suspended for the period that the FMA thinks fit;
 - (e) an order that B's registration be suspended for the period that the FMA thinks fit;
 - (f) an order prohibiting A or B (or both) from acting in respect of a specified FMC audit, or a specified class or classes of FMC audit,—
 - (i) permanently; or
 - (ii) for any period that the FMA thinks fit;

- (g) an order that A or B (or both) pay to the FMA any sum that the FMA considers just and reasonable towards the costs and expenses of, and incidental to, the FMA's investigation and the proceedings.
- (3) The FMA must not exercise a power referred to in this section in relation to A or B unless—
 - (a) the FMA gives A or B at least 10 working days' written notice of the following matters before it exercises the power:
 - (i) that the FMA may exercise a power under this section; and
 - (ii) the reasons why it is considering exercising that power; and
 - (b) the FMA gives A or B or his, her, or its representative an opportunity to make written submissions and to be heard on the matter within that notice period.

21 Section 79 amended (Miscellaneous matters relating to orders)

Replace section 79(2)(a) and (b) with:

- (a) the licensed auditor or audit firm against which the order is made; and
- (b) the accredited body that issued the licence to that licensed auditor or authorised the registration of that audit firm; and

22 Section 80 amended (FMA may take over and perform regulatory functions)

Replace section 80(a) with:

- (a) the accredited body asks the FMA to act in that manner in relation to—
 - (i) a class of its members; or
 - (ii) a class of audit firms that the accredited body has authorised the registration of under section 25; and

23 Section 84 amended (Regulations)

(1) After section 84(1)(c), insert:

- (ca) prescribing requirements for the purposes of section 25(1)(b)(iii) or 26(1)(ab)(iv), including (without limitation) requirements relating to a company's or an overseas company's—
 - (i) ownership, including requirements relating to who may be a shareholder or member and who may exercise voting rights (for example, requiring all or a majority of voting rights to be held by members of the Institute or an accredited body);
 - (ii) governance, including requirements relating to who may be a director or senior manager (for example, requiring all or a majority of directors to be members of the Institute or an accredited body);
 - (iii) legal structure:

- (iv) systems, policies, and procedures that relate to any of the following:
 - (A) promoting compliance with the requirements imposed by or under any enactment that relates to the conduct of FMC audits:
 - (B) promoting compliance with auditing and assurance standards:
 - (C) otherwise promoting reasonable care, diligence, and skill in the carrying out of FMC audits:
 - (v) professional indemnity insurance:
- (2) After section 84(1), insert:
- (1A) Any regulations made under subsection (1)(ca) relating to professional indemnity insurance may, without limitation,—
- (a) specify the terms and conditions upon which insurance is to be available, and any circumstances in which insurance cover may be excluded or modified:
 - (b) specify the minimum terms and conditions that an insurance policy must satisfy:
 - (c) specify circumstances in which a body corporate or any class of bodies corporate is exempt from the requirements:
 - (d) require a body corporate to have arrangements in place that ensure that an accredited body can ascertain whether the insurance is being maintained in accordance with the regulations.

Reprints notes

1 *General*

This is a reprint of the Auditor Regulation Amendment Act 2014 that incorporates all the amendments to that Act 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*

Auditor Regulation Amendment Act 2014 Commencement Order 2015 (LI 2015/115)