



Financial Markets Conduct (Overseas Custodians of Scheme Property—Assurance Engagement) Exemption Notice 2022

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

- 1 Title**
This notice is the Financial Markets Conduct (Overseas Custodians of Scheme Property—Assurance Engagement) Exemption Notice 2022.
- 2 Commencement**
This notice comes into force on 24 September 2022.
- 3 Revocation**
This notice is revoked on the close of 14 March 2026.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013

NZ scheme property means scheme property of a registered scheme

overseas assurance engagement has the meaning given in clause 6(3)

overseas assurance report, in relation to a relevant period, means an assurance report provided under an overseas assurance engagement for that period

Regulations means the Financial Markets Conduct Regulations 2014

relevant period has the same meaning as in regulation 88(4) of the Regulations

relevant persons has the same meaning as in regulation 87(4) of the Regulations.

- (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.

5 Exemption from assurance engagement requirement

- (1) A custodian is exempted from regulation 87(1) to (2) of the Regulations for a relevant period if—
- (a) the relevant period ends—
 - (i) on or after 24 September 2022; but
 - (ii) before 14 October 2025; and
 - (b) the custodian has its principal place of business outside New Zealand.
- (2) If a custodian is exempted under subclause (1) in relation to a relevant period, any sub-custodian appointed by the custodian to hold any NZ scheme property is also exempted for the relevant period.

6 Conditions of exemptions

- (1) The exemption in clause 5 for a relevant period is subject to the following conditions:
- (a) the custodian must obtain, within 4 months after the end of the relevant period, 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 relevant period:
 - (b) the custodian must ensure that the following information is given to each of the relevant persons within 20 working days after the custodian obtains the overseas assurance report for the relevant period (or the last of those reports if there is more than 1):
 - (i) a copy of each overseas assurance report; and
 - (ii) for each report, 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
- (iii) for each report, to the extent that it 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) The requirement under subclause (1)(a) includes a requirement to obtain the overseas assurance reports for the overseas assurance engagements within the 4-month period referred to in that paragraph.
- (3) In this clause, **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 relevant 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.

Schedule Overseas jurisdictions

cl 6(3)

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

Dated at Wellington this 23rd day of August 2022.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice, which comes into force on 24 September 2022 and is revoked on 14 March 2026, exempts certain overseas custodians of scheme property from the requirement in regulation 87 of the Financial Markets Conduct Regulations 2014 (the **Regulations**). That is a requirement 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 scheme property of registered schemes held by the custodian or its sub-custodians.

This notice applies to relevant periods that end on or after 24 September 2022 but before 14 October 2025.

This notice is substantially similar to the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2018, which is revoked on the close of 23 February 2023. That notice covers certain relevant periods that end before 24 September 2022.

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

**Financial Markets Conduct (Overseas Custodians of
Scheme Property—Assurance Engagement) Exemption
Notice 2022**

2022/240

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Wellington, New Zealand:

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