



Financial Markets Conduct (Licensed Independent Trustees of Restricted Schemes) 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.

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Notice

1 Title

This notice is the Financial Markets Conduct (Licensed Independent Trustees of Restricted Schemes) Exemption Notice 2021.

2 Commencement

This notice comes into force on 16 September 2021.

3 Revocation

This notice is revoked on the close of 15 September 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Regulations means the Financial Markets Conduct Regulations 2014

relevant person, in relation to a restricted scheme to which this notice applies, means—

- (a) an employer that provides access to the scheme for its employees; or
 - (b) an administration manager or an investment manager of the scheme.
- (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 Application

This notice applies to a restricted scheme (**A**) if—

- (a) A's trustees consist only of a sole corporate trustee; or
- (b) both of the following apply:
 - (i) A's trustees include a licensed independent trustee who also acts as a director of a sole corporate trustee for 1 or more other restricted schemes:
 - (ii) the sole corporate trustee is a related body corporate of a relevant person.

6 Exemptions

- (1) The manager of A is exempted from section 131(1)(d) of the Act to the extent that it requires the licensed independent trustee to be a person who is not a director of a related body corporate of a relevant person (*see* paragraph (c) of the definition of independent in section 131(3) of the Act).
- (2) The manager of A is exempted from section 133 of the Act to the extent that it relates to the requirement referred to in subclause (1).

7 Conditions

The exemptions in clause 6 are subject to the conditions that—

- (a) the licensed independent trustee in respect of A is not a director of any related body corporate of a relevant person (other than a related body corporate that is the sole corporate trustee referred to in clause 5); and
- (b) the constitution of the sole corporate trustee referred to in clause 5 does not authorise any of its directors to act in a manner that the director believes is in the best interests of the holding company of the sole corporate trustee even though it may not be in the best interests of the sole corporate trustee.

Dated at Wellington this 29th day of July 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice, which comes into force on 16 September 2021 and is revoked on 15 September 2026, provides exemptions relating to the requirement for restricted schemes to have a licensed independent trustee that satisfies paragraph (c) of the definition of independent in section 131(3) of the Financial Markets Conduct Act 2013 (the **Act**). The exemptions apply only to the extent that paragraph (c) provides that the licensed independent trustee must not be a director of a related body corporate of an employer that provides access to the restricted scheme for its employees or of an administration manager or an investment manager of the restricted scheme. The exemptions are further limited to certain situations involving the use of a sole corporate trustee.

The conditions of the exemptions prevent the licensed independent trustee from being a director of any other related body corporate (other than the sole corporate trustee) and contain a restriction relating to the sole corporate trustee's constitution.

The Financial Markets Authority (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,—

- without the exemptions, restricted schemes may be required to restructure their trustee arrangements or use external administration managers or investment managers even though those changes do not result in any greater degree of independence of the licensed independent trustee. The exemptions therefore promote a purpose of the Act by avoiding unnecessary compliance costs; and
- the substance of the independence requirement is preserved by the exemptions. This is because licensed independent trustees will still be required to be independent of an employer that provides access to the scheme for its employees and the administration manager or investment manager of the scheme (and their related bodies corporate other than the sole corporate trustee). In addition, the other independence requirements of section 131(3) of the Act must still be satisfied. The exemptions therefore promote another purpose of the Act by ensuring that appropriate governance arrangements apply to financial products that allow for effective monitoring and reduce governance risks; and
- the exemptions apply only in limited situations where a licensed independent trustee acts as a director of a restricted scheme's sole corporate trustee. The exemptions clarify that the licensed independent trustee's independence under the Act is not compromised merely by its status as a director of that sole corporate trustee regardless of the sole corporate trustee's corporate relationships.

Therefore, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 August 2021.

This notice is administered by the Financial Markets Authority.