

**Reprint
as at 15 March 2021**



Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2018

(LI 2018/8)

Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2018:
revoked, on 15 March 2021, by section 97(3)(d) of the Financial Services Legislation Amendment
Act 2019 (2019 No 8).

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 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.

2 Commencement

This notice comes into force on 24 February 2018.

3 Revocation

This notice is revoked on the close of 23 February 2022.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
exempt period has the meaning given in clause 5
overseas assurance engagement has the meaning given in clause 6(2)
Regulations means the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014.
- (2) Any term or expression that is defined in the Financial Advisers Act 2008 or the Regulations (including regulations 9 and 10) 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

A custodian is exempted from regulations 9(1) and (2) and 10(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 15 March 2021; and
- (c) the custodian complies with clauses 6 and 7 in relation to that exempt period.

Clause 5(b): amended, on 1 February 2021, by clause 4 of the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Amendment Notice 2020 (LI 2020/332).

6 Overseas assurance engagement

- (1) For the purposes of clause 5(c) in relation to an exempt period, a custodian must obtain 1 or more overseas assurance engagements that together cover all FMCA custodial services provided by the custodian, or any sub-custodian appointed by the custodian, to a client of the custodian in New Zealand in relation to client money and client property 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 FMA and clients on request

- (1) For the purposes of clause 5(c) in relation to an exempt period, a custodian must ensure that the required information is given,—
- (a) to the FMA, within 20 working days after the custodian obtains the overseas assurance report for the exempt period (or the last of those reports if there is more than 1); and
 - (b) to any client of the custodian who requests a copy, within 10 working days after the request is received.

- (2) In this clause,—

overseas assurance report, in relation to an exempt period, means an assurance report provided under an overseas assurance engagement referred to in clause 6(1) for the exempt period

required information, in relation to an exempt period, means—

- (a) a copy of each of the custodian's overseas assurance reports for the exempt period; and
- (b) for each report,—
 - (i) a statement of all of the FMCA custodial services provided by the custodian or any sub-custodian appointed by the custodian 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 10 of the Regulations, information identifying where in the report those matters are addressed.

8 Time frame extended because of outbreak of COVID-19

- (1) This clause applies if a custodian who 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 applies in relation to exempt periods that end on or after 31 December 2019 but before 1 August 2020.

Clause 8: inserted, on 29 April 2020, by clause 7(2) of the Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020 (LI 2020/70).

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 Advisers (Overseas Custodians—Assurance Engagement) Exemption Amendment Notice 2020**
- **Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020**

This notice comes into force on 24 February 2018 and is revoked on 23 February 2022.

This notice exempts certain overseas custodians from the requirements in regulations 9 and 10 of the Financial Advisers (Custodians of FMCA Financial Products) 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 10 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 FMCA custodial services provided by the custodian or its sub-custodians to New Zealand clients.

The exemption applies for the custodian's relevant periods ending on or after 24 February 2018 but before 24 February 2021.

A similar exemption was granted for 1 year by the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017. This notice continues the policy of that exemption for a further 3 years 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 148(2) of the Financial Advisers Act 2008, 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 FMCA custodial services provided by the custodian or its sub-custodians to New Zealand clients:
- 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 and therefore that the protection of the New Zealand public is unlikely to be prejudiced:
- 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 9 and 10 of the Regulations would outweigh the benefits to investors and would not be justified by the benefit of compliance:
- 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 Multi-lateral 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.

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

- **Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Amendment Notice 2020**
- **Financial Advisers (Custodian Assurance Engagement 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 Advisers (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 Advisers (Overseas Custodians—Assurance Engagement) Exemption Amendment Notice 2020 (LI 2020/332)

Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020 (LI 2020/70): clause 7

Financial Services Legislation Amendment Act 2019 (2019 No 8): section 97(3)(d)