

# Standard Conditions for independent trustee licences (for corporates)

If we grant you an independent trustee licence (as a corporate), the licence will be subject to conditions. See section [402](#) of the [Financial Markets Conduct Act 2013](#) (FMC Act).

Conditions will include:

- a condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see section [402\(1\)\(a\)](#) of the FMC Act);
- conditions imposed by the FMA under section [403](#) of the FMC Act – these will generally include:
  - the standard conditions (see **part A** below)
  - any specific conditions (see **part B** below).
- Any conditions imposed by the [Financial Markets Conduct Regulations 2014](#) (the **Regulations**). (See **part C** below).

We will consult with industry prior to changing the standard conditions in Part A.

## A. Standard conditions

Where an independent trustee licence (for a corporate) refers to *standard conditions*, this means the following conditions, which will be effective on and from 1 April 2014:

### 1. Skills and expertise

**Standard condition:**

You, or any authorised body covered by your licence, must inform us whenever there is a change in your key people.

**Explanatory note:** Your **key people** means the people in your corporate entity that have, or will have, a material impact on any action you take in performance of your functions as an independent trustee. Regulation [191\(1\)](#) already requires you to inform the FMA as soon as practicable when there is any change to your directors or senior managers, or to the key personnel of your authorised bodies. Standard condition 1 applies to the other key people you should have told us about when you first applied for a licence and requires you to keep that information up to date. You can find details of who these people are in the capability section of the Licensing Application Guide.

## 2. Independence

**Standard condition:**

You must ensure that only your directors and staff who are 'independent' as defined in section 131(3) of the FMC Act have a material role in performance of your functions as an independent trustee. You must confirm to the FMA at the end of the scheme's financial year (for each scheme you serve as the licensed independent trustee), that you are still 'independent' as defined in section 131(3) of the FMC Act. You must notify us as soon as practicable if you cease to be 'independent' as defined in section 131(3) of the FMC Act in relation to any such scheme.

**Explanatory note:** This standard condition does not limit your obligation to be 'independent' at all times in relation to any restricted scheme for which you are the licensed independent trustee. Although not all of your directors and staff need to be independent, the condition requires you to ensure non-independent individuals do not have any material influence on the performance of your functions as an independent trustee. The condition also requires you to notify us if you cease to be 'independent' as defined in section [131\(3\)](#) of the Act. If you cease to be 'independent' you will cease to qualify as the licensed independent trustee for that scheme under section [131\(1\)](#). In addition to notifying the FMA, you should consider whether you are required to resign from the role of trustee of that scheme.

## 3. Outsourcing

**Standard condition:**

You must not outsource any function that is reasonably likely to have a material impact on any action you take in performance of your role as an independent trustee.

**Explanatory note:** This condition prevents you from delegating any of part of your role as an independent trustee. You may only perform the role through your directors and staff who are 'independent' as defined in section 131(3) of the FMC Act.

## 4. Ceasing to act

**Standard condition:**

You must notify the FMA as soon as practicable if you have to vacate the office of licensed independent trustee for any scheme for any reason, including if you:

- resign
- become insolvent
- are removed from office
- can no longer perform your duties for any reason.

**Explanatory note:** This condition requires you to notify the FMA when you cease to act as an independent trustee for any scheme so the FMA can ensure appropriate action is being taken by the remaining trustee(s).

## 5. Professional development

**Standard condition:**

You must annually provide the FMA with a copy of your continuing professional development plan and a description of any training courses taken for all individuals who will have a material impact on any action you take in performance of your functions as an independent trustee.

**Explanatory note:** This standard condition only relates to your directors and key people in your corporate entity that have, or will have, a material impact on any action you take in performance of your functions as an independent trustee (see standard condition 1). You should keep a written record of all training courses these people attend, relevant to your role as an independent trustee. You also need to maintain a plan for their continuing professional development, which should identify learning objectives and how you plan to achieve those learning objectives. This condition requires you to provide this information to the FMA annually.

## 6. Compliance

**Standard condition:**

You must have, at all times, adequate and effective systems, policies, processes and controls that are likely to ensure you will meet your market services licensee obligations in an effective manner.

**Explanatory note:** This condition requires you to keep your systems, policies, processes and controls up to date to ensure you are always likely to be able to meet your market services licensee obligations in an effective manner. Changes may be needed over time as the size or scope of your business changes or due to changes in the market as a whole. You should consider whether your systems, policies, processes and controls are sufficient in to meet the requirements of the FMC Act and Regulations by reference to the minimum standards set out in the relevant Licensing Application Guide.

## 7. Governance arrangements

**Standard condition:**

Your governance and compliance arrangements must be substantially the same as, or better than, those in place, or which the FMA was advised of, at the time you applied for your licence (or any subsequent change advised to the FMA). You must notify the FMA of material changes to your governance and compliance arrangements [as soon as practicable](#).

**Explanatory note:** This condition requires you to maintain your compliance and governance arrangements to at least the standard you have told us about, but it allows flexibility for these arrangements to be improved. This condition also requires you to notify us of material changes to your governance and compliance arrangements, [as soon as practicable \(which we would ordinarily consider to be within five working days after the change takes effect\)](#). For further information in relation to the requirements of your governance and compliance arrangements see the governance and compliance sections of the Licensing Application Guide.

## 8. Professional indemnity insurance

### Standard condition:

For each new appointment you accept as a licensed independent trustee you must notify the FMA of the level and scope of professional indemnity insurance cover that you consider appropriate and you must have cover at or above that level and scope.

**Explanatory note:** You will have told us in your licence application about the level of professional indemnity insurance you propose to be covered by. This condition requires you to keep this information up to date when you are appointed as a licensed independent trustee for a new scheme. If you have previously told us you don't think you need any professional indemnity insurance cover, you should tell us whether the same reasoning applies to the new scheme that you are appointed as an independent trustee for.

## B. Specific conditions

We may also set extra licence conditions for individual entities on a case by case basis.

Any specific conditions will be notified to you at the time we grant you your licence.

## C. Conditions imposed under Regulations

Regulations made pursuant to the FMC Act may impose additional conditions on your licence. These regulations may change from time to time, so you will need to keep abreast of any new regulations.

The FMC Act and regulations also contain many obligations that you will need to comply with when you have a licence even though they are not called licence conditions. For example section [412](#) of the FMC Act requires you to report various matters to the FMA as soon as practicable, including any breach (or likely breach) of your market services licensee obligations and any other material changes of circumstances. Also, regulation [192](#) requires you to report to the FMA, as soon as practicable, any serious problems that arise in any scheme for which you act as licensed independent trustee.

The regulations that impose additional licence conditions on an independent trustee licence are regulations [191](#) and [192](#) of the Regulations. Appendix 1 sets out these regulations, but you should refer to the FMA Act and Regulations in full to understand your market service licensee obligations.

# Appendix 1

## Conditions imposed by Financial Markets Conduct Regulations 2014

Extract from the Financial Markets Conduct Regulations 2014:

### *Conditions of licences*

#### **191 General reporting condition**

- (1) A market services licence is subject to a condition that, if any of the following occurs, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:
- (a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that —
    - (i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event or
    - (ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas) or
  - (b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
    - (i) the licensee
    - (ii) an authorised body
    - (iii) a director or senior manager of the licensee
    - (iv) any of the key personnel of an authorised body or
  - (c) a director or senior manager of the licensee, or any of the key personnel of an authorised body —
    - (i) resigns, is removed, or otherwise ceases to hold the office or position
    - (ii) is appointed, employed, or engaged or
  - (d) an auditor of the licensee or an authorised body —
    - (i) resigns or otherwise ceases to hold the office
    - (ii) is appointed (other than by way of reappointment) or
  - (e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation) or
  - (f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company) or
  - (g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.
- (2) In subclause (1)(b), **relevant proceeding or action** —

- (a) has the same meaning as in regulation 5(1)
  - (b) includes a criminal proceeding for a crime involving dishonesty but
  - (c) does not include any proceeding commenced, or action taken, by the FMA.
- (3) In subclause (1)(g), **control** has the same meaning as in clause 48 of Schedule 1 of the Act.

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#### **192 Condition for independent trustees to report serious problems**

- (1) A market services licence for an independent trustee of a restricted scheme is subject to a condition that, if the licensee has reasonable grounds to believe that a serious problem has arisen in relation to a managed investment product in the scheme, the licensee must, as soon as practicable —
- (a) report the serious problem to the the FMA
  - (b) disclose to the the FMA all information relevant to the serious problem that is in the possession or control of the independent trustee and was obtained in the course of, or in connection with, the performance of the functions of that trustee.
- (2) In subclause (1), **serious problem** has the same meaning as in [section 199\(2\)](#) of the Act.