

17 May 2016



FMA approves class exemptions from some detailed compliance requirements for property schemes

The FMA believes that property schemes generally can and should comply with the same licensing and governance requirements under the FMC Act as other managed investment schemes (MIS). However given the characteristics of property schemes, we recognise that full compliance with some specific requirements may be unnecessary, and the cost is likely to outweigh benefits for investors.

As a result, we have approved class exemptions for property schemes and their custodians to address these matters.

Custody of real property assets

The first exemptions relieve existing closed property investment schemes from the requirement for real property assets to be held by the supervisor or an independent custodian. Conditions will include a requirement that a first ranking encumbrance in favour of the supervisor is registered against the property. We will still require other scheme assets to be held by the supervisor or an independent custodian.

We have also approved an exemption from having an annual assurance engagement for managers or their associates who hold real property under the first exemption from the requirement, as a custodian. The custodian of other scheme assets will still need to have an annual assurance engagement.

We anticipate these exemptions may save unnecessary costs for existing schemes that already have sufficient means in place to ensure secure holding of real property assets.

Cash reconciliations

We have also approved an exemption relieving custodians of both existing and new property investment schemes from the requirement to reconcile records of money daily. This is on the condition that those records are reconciled at a frequency that is appropriate for the volume and frequency of transactions. Given many property investment schemes will have a much lower number of transactions than other MIS, we anticipate this will save unnecessary costs where daily reconciliations would provide little value.

We expect to finalise an exemption notice to give effect to these exemptions by the end of June 2016. When the exemption notice is finalised you will be able to find it on our website and on the New Zealand legislation website. If you have any questions about these exemptions please email us at exemptions@fma.govt.nz and we will call you to discuss.

Individual licensing and governance exemptions available on application by qualifying property investment schemes in active wind-up

We recognise that for schemes already in active wind-up, the cost of complying with the new licensing and governance requirements may outweigh benefits for investors. Therefore we have approved in principle the grant of individual exemptions from the licensing and governance requirements for these property investment schemes.

The exemptions will only be available (on application) to existing property investment schemes that are closed to new investors and being actively wound-up.

These exemptions are intended to enable a scheme that is being wound up to operate under its existing governance framework for a short period of time while winding up is completed (up to 18 months from the end of the transition period).

Relief may be available from:

- the requirement to have a manager who is a licensed
- the requirement to have an independent licensed supervisor (not applicable for schemes with a licensed manager), if the scheme does not already have an independent licensed supervisor
- the requirement for the scheme's governing document to comply with the content requirements for governing documents in the FMC Act
- the requirement to have a statement of investment policies and objectives.

Alternative reporting and disclosure requirements will be required as a condition of any individual exemption granted.

If a property investment scheme you are managing is in active wind-up, and you expect it will be wound up within 18 months, we encourage you to contact us as early as possible to discuss your particular circumstances, whether you could qualify for relief, and the terms and conditions on which any relief is likely to be granted. Please note that exemption applications generally take four to six weeks to consider and conclude from the time we receive all the information we need. You can email us at exemptions@fma.govt.nz and we will call you to discuss.

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