

Shaping the future of our markets

13 November 2013

Consultation: Licensing independent trustees

Draft minimum standards and licence conditions for independent trustees of restricted schemes

The Financial Markets Conduct Act 2013 (the Act) introduces licensing for providers offering certain types of financial services.

In future, you may need a licence if you want to be an independent trustee of a restricted scheme – and will need to meet, and maintain, minimum standards across key areas of your business.

This paper summarises the proposed minimum standards for an independent trustee licence. We invite you to review these and share your feedback with us. This is our chance to work together to shape the new future for our industry.

Submissions close on 12 December 2013. The form at the back provides more details.

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Part 1. Overview

A. Who are independent trustees of restricted schemes?

An independent trustee is an individual trustee, or a director of a sole corporate trustee, who meets the definition of independent under the Act (Section 131(3)). A restricted scheme is a KiwiSaver, superannuation or workplace savings scheme on the register of managed investment schemes, and is identified as a restricted scheme on that register. See Section 6 of the Act for a formal definition.

B. Will you need a licence?

You will need an Independent Trustee licence if you are:

- An individual, or a director of a sole corporate trustee, appointed as an independent trustee of a restricted KiwiSaver scheme
- An individual appointed as an independent trustee to a workplace superannuation or legacy scheme board of trustees
- A director of a sole corporate trustee appointed as an Independent Trustee of a workplace superannuation scheme or legacy scheme.

C. Minimum standards – four key areas

To become a licensed independent trustee your business must meet a range of minimum standards. We propose that providers will need to meet minimum standards in four key areas:

- Fit and proper – be a ‘fit and proper’ person to be independent trustee, and satisfy the independent requirement under the Act
- Capability – have the right skills and experience to effectively perform the independent trustee role
- Financial resources – adequate professional indemnity insurance
- Governance – a governance and compliance culture.

You must meet the minimum standards at the time of licensing and on an on-going basis. These proposed standards do not cover all your obligations under the Act or regulations.

D. For your information

Throughout this paper we talk about the need for systems, processes and procedures, or arrangements. We cannot be more specific because regulations and standards are still being finalised and, importantly, because what will be required will depend to some degree on the nature of your business. We will take the size, complexity and nature of your business into account when we assess your application.

Please note

This paper is intended to give you a high level overview of the proposed minimum standards and licence conditions for market service licensees that will come into effect under the Act, so that you have the chance to comment. Regulations are still being developed and there may be changes. A licence application guide will be published after regulations are finalised.

Part 2. Fit and proper

Fit and proper

You must demonstrate that you are a fit and proper person to be an independent trustee.

Minimum standards

1. You must be a fit and proper person to hold your position as an independent trustee. This requirement broadly covers the tests of:
 - **Good character** covering integrity, probity, trustworthiness, character and reputation (see note 1)
 - **Capability** – competence, skills and experience – the next section on capability provides more details.
2. You must satisfy the ‘independent’ requirement under the Act.

Note 1: We will assess **good character** based on various factors including (but not limited to) past non-compliance; convictions or involvement in dishonesty, deceit, theft or fraud; failure to manage business or personal financial affairs; dismissal from a position of trust; and adverse information from other public bodies including other regulators and Inland Revenue.

Part 3. Capability

Capability

You must have the right skills and experience to be able to properly and effectively perform the independent trustee role.

Minimum standards

1. You must have a basic level of understanding of the nature and duties of trusteeship (see note 1).
2. You must have relevant skill and knowledge to effectively perform the independent trustee role (see note 2).
3. You must demonstrate a commitment to keeping your skills up to date (for example, through a continuing professional development plan or by attending relevant courses).

Note 1: For example you have obtained a Workplace Savings NZ Inc.’s Certificate in Trusteeship, or held community trustee roles, or previously held office as an independent trustee and have proven performance in that role.

Note 2: While you don’t need to have been an independent trustee before, we will take into account relevant experience, including the length and complexity of previous roles. If you have been an independent trustee before, we will consider your industry experience, including the length and experience of previous roles and assets under management. The primary role of an independent trustee is to be the independent voice of the scheme’s trustees, so ‘relevant skill and knowledge’ may include experience with superannuation scheme operations, so you are able to recognise any ‘red flags’ that may arise.

Part 4. Financial resources

Professional indemnity insurance

You must have adequate professional indemnity insurance, at all times, for each scheme you are an independent trustee for.

Minimum standards

1. You must have professional indemnity insurance for each restricted scheme you are an independent trustee for.
2. You must ensure the level of cover is adequate and appropriate for the nature, scale and complexity of the relevant scheme – there is no set minimum cover.
3. You may hold your own indemnity policy covering all the work you do, or be covered under a policy held by the scheme.
4. You, or the scheme, must have sufficient resources to meet any policy excess.

Part 5. Governance and compliance

Governance and compliance

You must ensure that you have adequate and effective policies and systems, or arrangements to exercise your powers or perform your duties under the Act.

Minimum standards

1. You have adequate and effective procedures to monitor your compliance with your regulatory obligations, in particular your professional duty of care and reporting obligations to FMA.
2. You have an adequate process to identify, and resolve deficiencies in, any of your policies and systems for monitoring compliance with your regulatory obligations.
3. You must have procedures or arrangements to:
 - Ensure you can identify serious problems with managed investment products in the scheme, and/or any events that give you grounds for concern. This includes events that may indicate governance issues with the scheme (see note 1).
 - Report the serious problem or event to FMA.

Note 1: Examples of events that may indicate problems include when you are the only person to vote against a resolution – or when a resolution is passed that both you and members' representative/s vote against.

Part 6. Licence conditions

A. Standard conditions

If we grant you an independent trustee licence, it will contain conditions that support your licensee obligations. These are the standard conditions we are proposing to include.

The final regulations may contain further standard conditions.

1. Fit and proper

You must confirm to us at the end of the scheme's financial year (for each scheme you serve as trustee for), that you are still 'independent' as defined in section 131(3) of the Act.

2. You must notify us if you cease to be 'independent' as defined in section 131(3) of the Act.

3. You must notify us if you have to vacate the office of trustee under the provisions of the scheme's governing document, including if you:

- Resign
- Become bankrupt
- Are removed from office
- Can no longer perform your duties for any reason.

4. You must tell us of your continuing professional development plan and any training courses you take.

5. Financial resources

You must notify us if:

- You are no longer covered by professional indemnity insurance for the scheme you serve as an independent trustee
- There is any claim against your professional indemnity insurance
- The scheme's trustees are jointly named in any court action.

6. Reporting

You must report any events to us that could indicate governance issues in the management of the restricted scheme, including where:

- You are the only person to vote against a resolution
- A resolution is passed that both you and the members' representative/s voted against.

B. Specific conditions

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

The next step

How do I make a submission?

Please use the form on the next page – this gives the details of what you need to do. Forms must be submitted electronically in both PDF and word formats and emailed to consultation@fma.govt.nz – please put 'Feedback independent trustee standards and conditions' in the subject line.

Alternatively, you can make an online submission on our engagement site www.talktous.fma.govt.nz. You need to register to be able to use the site.

Submissions close on 12 December 2013.

Where can I get more information?

You'll find more information about the changes on our website www.fma.govt.nz, or at the Ministry of Business Innovation and Employment site www.mbie.govt.nz

If you have questions about the licensing consultation process, please get in touch.

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