Consultation Paper: Exemptions impacting overseas businesses, and restricted schemes

About this consultation paper

Over 2015 the FMA has been working with stakeholders to support the implementation of the Financial Markets Conduct Act 2013 (FMC Act) regime. One of the ways we have been doing this is by considering use of our legislative tools such as class exemptions, designations, frameworks, methodologies, and public accountability notices.

This paper sets out our exemptions proposals on four issues impacting overseas businesses, and trustees for restricted schemes and potential exemptions that may provide relief. The issues are:

- balance date alignment for FMC reporting entity subsidiaries
- recognition of overseas auditors for custodian assurance engagements
- treatment of overseas banks offering simple debt securities to existing investors resident in New Zealand
- independence requirements for licensed trustees appointed as directors of sole corporate trustees for restricted schemes.

We want your comments on the exemption proposals discussed in this paper.

How do I make a submission?

Please use the form provided at the end of this document – it has 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 'Exemptions impacting overseas businesses, and restricted schemes: [your organisation's name]' in the subject line.

Submissions close on 24 March 2016.

Next steps

After considering submissions, we will finalise our policy decisions and aim to have any exemptions in force by mid-2016.

Questions

If you have questions about the consultation process, please contact legislative tools manager Natalie Muir directly on 04 471 4616 or at exemptions@fma.govt.nz. Please title your email 'Consultation Paper: Exemptions impacting overseas businesses, and restricted schemes: [your organisation's name]'.

About this consultation paper:

This consultation is for: FMC reporting entities, licensed managers and scheme auditors, overseas banks, licensed independent trustees, restricted scheme managers, advisers and interested parties.	It aims to: seek feedback on the exemption proposals explained.

Document history

This version was issued in March 2016 and is based on legislation and regulations as at the date of issue.

FMA document reference code 2833099

Contents

Section 1: Balance date alignment for FMC reporting entity subsidiaries

Summary of issues

1.1 The FMC Act requires FMC reporting entities to prepare financial statements that comply with generally accepted accounting practice, and lodge those statements with the Registrar of Financial Service Providers within four months of the FMC reporting entity's balance date. If an FMC reporting entity has one or more subsidiaries, it must prepare group financial statements by consolidating the financial information of the subsidiaries and the FMC reporting entity.

1.2 An FMC reporting entity preparing group financial statements must also ensure that its balance date is the same as the balance date of its subsidiaries.[1] This was a previous requirement of the Financial Reporting Act 1993 (FRA 93), and the Registrar of Companies had the power to grant exemptions.[2] Because the balance date alignment requirement is a long-standing legislative requirement coupled with the legislative default of a 31 March balance date, we don't expect there to be many difficulties complying with the balance date alignment requirement in the FMC Act.

1.3 In some cases, however, when other jurisdictions have inflexible statutory requirements for certain balance dates, we are aware it is difficult or impossible for an FMC reporting entity with subsidiaries incorporated overseas to comply with the FMC Act. For example, we are aware 31 December is a common mandatory balance date in some jurisdictions. In our questions below we seek information on the range of circumstances and extent of problems that exist.

1.4 We envisage in some cases it will be impossible to comply. For example, if an FMC reporting entity has two or more overseas subsidiaries with different inflexible balance dates it may be impossible for it to align all balance dates. In other cases it will be difficult. For example, if an FMC reporting entity has only one overseas subsidiary with an inflexible balance date, it may be able to comply with the balance date alignment requirement by changing either the subsidiary's or its own balance date. In either case, however, there may be significant regulatory process required.[3]

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[1] Section 461(3) Financial Markets Conduct Act 2013.

[2] Section 461(3) of the FMC Act essentially replicates the former requirements in sections 7(8) – (11) of the Financial Reporting Act 1993. The slight differences are that the FMA now has the power to grant exemptions rather than the Registrar of Companies in respect of FMC reporting entities, and the concept of 'issuer' (as defined in FRA 1993) has been replaced by 'FMC reporting entity'.

[3] In New Zealand, sections 41 to 43 of the Financial Reporting Act 2013 require FMC reporting entities to get the Commissioner of Inland Revenue's approval to change a balance date. The IRD considers applications for balance date changes on a case-by-case basis.

1.5 Even where possible, we do not consider requiring the FMC reporting entity to change its balance date to align it with an overseas subsidiary would have any significant benefit to investors or financial market regulators using the financial statements, and will add unnecessary compliance costs. Further, a balance date change may disadvantage the readers of its financial statements. For example, where an entity's existing balance date reflects its trading cycle and is consistent with its competitors, readers are in a good position to evaluate its performance both annually and against its competitors. Therefore, making an entity change its balance date could make analysing the statements more difficult for these readers, and increase their costs.

1.6 We also note the consolidated group financial statements of FMC reporting entities with overseas subsidiaries are not generally used to determine tax liability of the FMC reporting entity. Therefore, the balance date alignment requirement is not significant for tax assessment purposes in these circumstances.

Solution proposed

1.7 We recognise that there may be good policy reasons to have unaligned balance dates. In the limited number of circumstances where the default requirements in the legislative settings result in unaligned balance dates, we're not aware of any good policy reasons to require the FMC reporting entity or its overseas subsidiaries to attempt to change their balance date.

1.8 We therefore propose that FMC reporting entities with overseas subsidiaries operating in jurisdictions with inflexible balance dates be exempted from the balance date alignment requirement. We consider this exemption is appropriate regardless of whether or not a change to the balance date could be made through a regulatory approval process. In our view, an exemption is necessary or desirable to avoid unnecessary compliance costs, and to promote flexibility in the financial markets.

Condition considered

1.9 The few exemptions granted by the Registrar of Companies under the FRA 93, included a condition that the subsidiary prepared New Zealand GAAP-compliant financial statements as at the parent entity's balance date as if it was also its balance date. These statements were required to facilitate preparation of group financial statements by the parent entity, incorporating the subsidiary's financial statements at the parent entity's balance date.

1.10 Our view is that requiring financial statements of the subsidiary to be prepared at the FMC reporting entity's balance date for consolidation into the group financial statements is not necessary as a condition of the exemption. This is because the accounting standard NZ IFRS 10 Consolidated Financial Statements (NZ IFRS 10) adequately provides for the consolidation of a subsidiary's financial information when it has a different balance date.

1.11 NZ IFRS 10 applies to the majority of FMC reporting entities.[4] In certain circumstances this standard requires additional financial statements to be prepared, while in others it does not. As a starting point it requires a parent company and its subsidiaries to have the same balance date. However, similar to the condition of exemptions granted by Registrar of Companies, when there are unaligned balance dates NZ IFRS 10 requires the subsidiary to prepare financial information as of the same balance date as the parent to enable the parent to consolidate the financial information of the subsidiary.

[4] Excluding FMC reporting entities that are public benefit entities or not-for profit entities.

1.12 Further, where this is impractical NZ IFRS 10 provides some flexibility by permitting the parent to consolidate the financial information of the subsidiary using the most recent financial statements of the subsidiary.[5] If doing this, the subsidiary's balance date must precede the parent's balance date by no more than three months and adjustments need to be made for the effects of significant transactions or events that occur between the balance dates.

1.13 The balance date provisions in NZ IFRS 10 mean that if there are more than three months between the balance dates of the entities, the subsidiaries will need to prepare financial information as of the same balance date of the parent to enable the parent to consolidate the subsidiaries' financial information into its group financial statements. We think NZ IFRS 10 gets the settings right and we do not consider any specific condition is necessary.

Additional circumstances

1.14 We do not expect any FMC reporting entities with exclusively New Zealand subsidiaries to have any difficulties complying with the balance date alignment requirement as this is a long-standing requirement of the previous legislation. However, we are interested to hear if there are any FMC reporting entities whose New Zealand subsidiaries have balance dates which are not aligned.

[5] See paragraphs B92 and B93 of NZ IFRS 10 Consolidated Financial Statements.

Questions

1.1 Are you aware of any particular FMC reporting entities that are likely to rely on the proposed exemption? We would like specific information on jurisdictions, including the reasons why the balance dates are inflexible.

1.2 The balance date requirements in NZ IFRS 10 will apply if our proposed exemption is granted to FMC reporting entities with overseas subsidiaries with inflexible balance dates.

(a) What benefits, including cost savings, would occur as a result of the proposed exemption compared to having to align balance dates? If possible, please estimate any cost savings.

(b) What risks, if any, are there in an FMC reporting entity using a subsidiary's most recent financial statements for consolidation purposes when the difference between the balance dates is fewer than three months compared to preparing subsidiary financial statements as at the FMC reporting entity's balance date for consolidation? Please explain the nature and significance of the risks, including any impacts on the transparency and effectiveness of the financial information in the FMC reporting entity's group financial statements.

1.3 As an alternative to relying on the balance date requirements in NZ IFRS 10, a specific condition equivalent to the condition of exemptions granted by the Registrar of Companies under the FRA 93 could be included (i.e. requiring financial statements of the subsidiary to be prepared for consolidation purposes as at the FMC reporting entity's balance date). Do you consider a specific condition would be appropriate and more effective in circumstances where there are unaligned balance dates in light of the compliance costs and benefits to investors and other users of the financial statements? Please explain your reasons, identify any benefits and estimate the costs.

1.4 Are you aware of any issues for FMC reporting entities with New Zealand subsidiaries complying with the balance date alignment requirement in the FMC Act? If so, please provide details of the circumstances where there may be an issue.

1.5 Do you agree this proposed exemption is both necessary and appropriate? Please explain your reasons. If there is a particular aspect of the proposal you do not consider necessary and appropriate, please identify that, and explain your reasons.

1.6 Do you have any other comments on our proposals?

Section 2: Recognition of overseas auditors for custodian assurance engagements

Summary of issues

2.1 The Financial Markets Conduct Regulations 2014 (FMC Regulations) require custodians of registered schemes to get an assurance engagement completed by a qualified auditor. The assurance engagement requires a review of the custodian's systems and processes and the scheme property.

2.2 As part of the assurance engagement, the FMC Regulations require a 'qualified auditor' to determine whether, in the auditor's opinion, there is reasonable assurance that:

- the custodian's processes, procedures and controls were suitably designed to meet the objectives of the assurance engagement throughout the period of the assurance engagement
- the custodian's processes, procedure and controls operated effectively through the period of the assurance engagement.

2.3 The term 'qualified auditor' is defined in the FMC Act to mean:

- a New Zealand-licensed auditor or
- a New Zealand-registered audit firm.

2.4 While there is scope for Australian auditors and audit firms to become qualified auditors, custodians based in overseas jurisdictions other than Australia will find it difficult to satisfy this requirement. The reasons are:

- it is unlikely to be feasible for a New Zealand auditor to undertake the work when the processes, procedures and controls are conducted outside of New Zealand
- in situations where it is possible for an assurance engagement to be obtained from a New Zealand qualified auditor, the costs are likely to be significant and potentially duplicative of the existing compliance processes of the custodian.

2.5 We understand that this issue will affect several overseas custodians (for example, those based in the UK) currently operating in the New Zealand market.

Solution proposed

2.6 We propose an exemption for overseas custodians from the requirement to obtain their assurance engagement from a New Zealand qualified auditor. Where the custodians already conduct a robust assurance engagement in the country in which they are based, it is our view that the costs of engaging a New Zealand auditor may potentially be disproportionate to the benefits to investors.

2.7 Historically we have, in certain situations, recognised overseas auditors and accounting standards in financial reporting exemptions. While there is less comparability between custodian assurance engagements across jurisdictions, we consider a class exemption will be appropriate where:

- the auditor providing the assurance engagement is independent of the custodian, and is a registered auditor in the country in which the custodian's operations are based
- the custodian is named as part of the assurance engagement. This provides us confidence that the assurance engagement specifically considered the processes, procedures and controls applying to New Zealand property.

Questions

2.1 Are you aware of any overseas custodians who face the issue discussed? Please provide details on these custodians, including their jurisdiction and existing assurance processes.

2.2 What risks are there in exempting overseas custodians from having to obtain their assurance engagement from a New Zealand qualified auditor?

2.3 Can these risks be appropriately mitigated? Are the proposed conditions sufficient, or should alternative conditions be considered?

2.4 What benefits, including cost savings, are there if the proposed exemption is granted with the proposed conditions? If possible, please estimate any cost savings.

2.5 If an exemption was granted, how broadly do you believe the class of custodians and auditors allowed to rely on the exemption should be drawn? For example, should the exemption be restricted to certain jurisdictions or certain audit standards?

2.6 Do you agree this proposed exemption is both necessary and appropriate? Please explain your reasons. If there is a particular aspect of the proposal you do not consider necessary and appropriate, please identify that, and explain your reasons.

2.7 Do you have any other comments on our proposals?

Section 3: Treatment of overseas banks offering simple debt securities to existing investors resident in NZ

Summary of issues

3.1 Under the FMC Act, offers of category 2 debt securities by registered banks have a lighter compliance path. The definition of a category 2 debt security is intended to capture what can loosely be termed 'simple debt products' (such as term deposits and call deposits).

3.2 Registered banks are not required to prepare part 3 disclosure documents or comply with part 4 governance requirements (trust deed and supervisor) for offers of simple debt products. The two reasons for this are:

- firstly, simple debt products are straight-forward investment products that generally carry low risk and are well understood by investors, reducing the value of part 3 disclosure
- secondly, New Zealand registered banks are subject to prudential supervision by the Reserve Bank. The Reserve Bank's oversight over the solvency and liquidity position of the registered bank is designed to ensure that the issuer can meet its payment obligations. As part of the supervision regime, registered banks are also required to prepare quarterly group disclosure statements and have a credit rating. These mechanisms provide for an appropriate level of oversight and transparency about the risks to investor funds.

3.3 We are aware of several overseas banks that are not registered in New Zealand who wish to offer simple debt securities to their existing New Zealand resident customers under a lighter compliance path.

3.4 Under the Securities Act 1978 (Securities Act) two overseas banks were granted exemptions that allowed them to make these types of offers:

- HSBC: the Securities Act (HSBC Overseas Banks) Exemption Notice 2014 and the Financial Reporting Act (HSBC Overseas Banks) Exemption Notice 2015)
- Lloyds: the Securities Act (Lloyds Banking Group) Exemption Notice 2014 and the Financial Reporting Act (Lloyds Banking Group) Exemption Notice 2015).

3.5 In granting the exemptions we have recognised that it is also appropriate to provide a lesser compliance path for overseas banks not registered in New Zealand where:

- the overseas bank is primarily making offers to New Zealand investors with whom they hold a prior banking relationship. This includes, for example, recent migrants or New Zealanders who have previously spent time working overseas. The exemptions therefore do not allow for the offers to be directly marketed to new investors

- the overseas bank is registered as a bank in its home jurisdiction, is financially sound, and subject to prudential supervision broadly equivalent to those of New Zealand registered banks. The overseas bank must:
    - have an investment-grade credit rating
    - be subject to statutory prudential requirements that seek to ensure the financial soundness of the bank, and impose disclosure obligations that ensure investors have access to information on the financial strength of the bank.

3.6 After 30 November it will no longer be possible for these overseas banks to operate under the Securities Act or any exemptions from that revoked Act. We are therefore considering potential exemptions from the FMC Act.

Solution proposed

3.7 We propose an FMC Act class exemption that would provide a lighter compliance path for overseas banks making offers of simple debt products. The exemption would allow overseas banks to offer simple debt products to New Zealand investors without having to prepare a part 3 disclosure documents or comply with the part 4 governance requirements (trust deed and supervisor), and part 7 financial reporting requirements of the FMC Act.

3.8 We intend to limit the application of the exemption to offers made by well-regulated and financially sound banks. To achieve these aims we propose the following conditions:

(a) the overseas banks would need to be subject to regulatory oversight standards that are broadly equivalent to those that apply in New Zealand

(b) the overseas bank must have an investment grade credit rating

(c) the overseas bank cannot undertake direct marketing of the simple debt products to New Zealanders who are not existing clients

(d) the overseas bank would need to comply with the requirements of its overseas jurisdiction governing the preparation, content, auditing, and public filing of financial statements. The overseas bank would need to make these financial statements accessible to investors (for example on its website)

(e) the overseas bank must include or attach certain New Zealand-specific disclosures on the terms and conditions of the product. These disclosures will highlight the risks associated with the investment (namely the fact the bank would not be registered in New Zealand and the challenges of enforcing New Zealand securities law).

3.9 In offering to New Zealand investors, overseas banks will also need to consider their obligations under the Reserve Bank of New Zealand Act 1989. In particular, overseas banks have an obligation not to use restricted words (such as 'bank' or 'banking') without authorisation (although in limited circumstances the Reserve Bank may also consider the use of no-objection letters in these cases).

Questions

3.1 Do you think that there is market demand from overseas banks to offer simple debt products to existing investors in New Zealand? Please provide details if possible.

3.2 What risks are there in granting an exemption to overseas banks meeting the proposed requirements making offers of simple debt products? Do you consider our exemption proposal appropriately balances these risks?

3.3 What benefits are there if the proposed exemption is granted with the proposed conditions?

3.4 Do you think the availability of such an exemption will encourage overseas banks to maintain banking relationships with existing investors based in New Zealand? Please give examples if possible.

3.5 If an exemption is granted, how should the class of overseas banks be defined? For example, should the class be limited to overseas banks registered in certain overseas jurisdictions?

3.6 Do you agree this proposed exemption is both necessary and appropriate? Please explain your reasons. If there is a particular aspect of the proposal you do not consider necessary and appropriate, please identify that, and explain your reasons.

3.7 Do you have any other comments on our proposals?

Section 4: Independence for licensed trustees who are directors of sole corporate trustees for restricted schemes

Summary of issues

4.1 Questions have been raised with us about the practical ability of restricted schemes to comply with the licensed independent trustee requirement when they use a sole corporate trustee (SCT).

4.2 A restricted scheme is a KiwiSaver, superannuation, or workplace savings scheme that has restricted membership or is closed to new members. Additionally, these schemes must register as restricted schemes. A restricted scheme does not need a licensed manager or a licensed supervisor, but must instead have a licensed independent trustee (LIT).

4.3 A licensed independent trustee is:

- a trustee that is independent as defined by section 131(3) of the FMC Act
- licensed under part 6 of the FMC Act.

4.4 The FMC Act requires trustees of a restricted scheme to:

- include at least one licensed independent trustee whose licence covers the scheme, or
- have an SCT with at least one director who is a licensed independent trustee whose licence covers the scheme.

4.5 An SCT is a vehicle for individual trustees to act together as directors through a corporate entity. For more information, see our information sheet *'New governance and accountability framework for restricted schemes and their trustees'*, our 'Independent trustee licensing' guidance, and section 4 of our September 2014 guidance note 'Governance under part 4 of the FMC Act'.

4.6 We have been asked whether an individual LIT director of an SCT meets the independent test in some situations. Section 131(3) defines 'independent' to mean a person who meets all of the criteria below:

(a) is not a related body corporate of any other trustee of the restricted scheme

(b) is not an employer who provides access to the scheme for its employees, or an administration manager or an investment manager of the restricted scheme (or a related body corporate of any of them)

(c) is not a director of, shareholder in, or an employee of any person referred to in paragraph (a) or (b)

(d) is not a current scheme participant

(e) is not a representative in any capacity of an organisation (such as a trade union) that represents the interests of one or more scheme participants

(f) is not a representative in any capacity of an organisation that represents the interests of one or more employer contributors to the scheme

(g) is not a corporate trustee if none of its directors are independent under this definition.

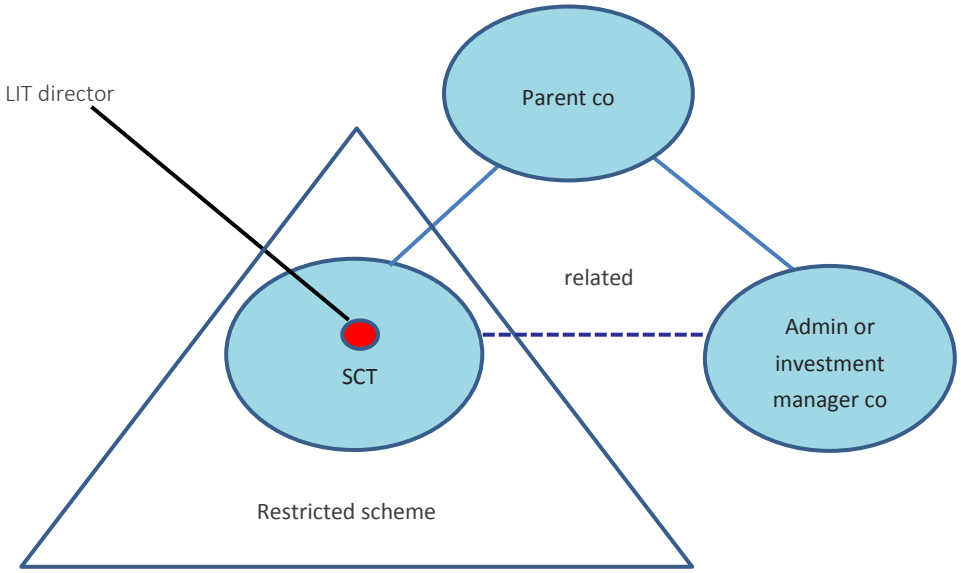
4.7 The purpose of the requirement is to ensure there is independent supervision – this is the role of the LIT. However, paragraphs (b) and (c) test the SCT's relationships, and not the LIT's. The effect is that if the SCT has relationships with related companies, that can mean the LIT does not meet the independent test, even though the LIT itself is independent.

4.8 An LIT must meet the independent test both for initial registration under section 131 of the FMC Act, and for on-going registration requirements under section 133.

4.9 We are aware of several situations where the issue arises, and we seek further information about the extent to which the issue is faced by restricted schemes.

Situation A: Administration management or investment management is in the same group of companies as the sole corporate trustee

4.10 We have been asked whether the 'independent' test in section 131(3) is met when an LIT director is a director of an SCT of a restricted scheme that is set up by a parent company, and where the administration manager or investment manager the scheme uses is in the same group of companies.



Key:

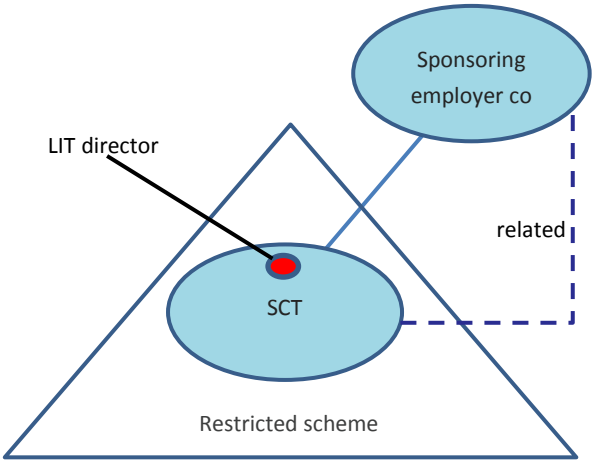
Company | Restricted scheme | Shareholder

Director | * Trustee | Related

4.11 In this case, the LIT does not meet the independent test because of sections 131(3)(b) and (c), as well as the definition of 'related body corporate' in the FMC Act's section 12(2). Companies in the same group are related body corporates. Applying these definitions, the LIT director will be a director of a corporate, (ie, a director of the SCT), which is a related body corporate of the administration manager or the investment manager of the restricted scheme.

Situation B: Where a sponsoring employer of the restricted scheme is a related body corporate of the sole corporate trustee

4.12 Similarly, questions have been raised about the LIT's independence in situations where an employer provides employees access to a restricted scheme, and the SCT is a body corporate that is related to the employer.



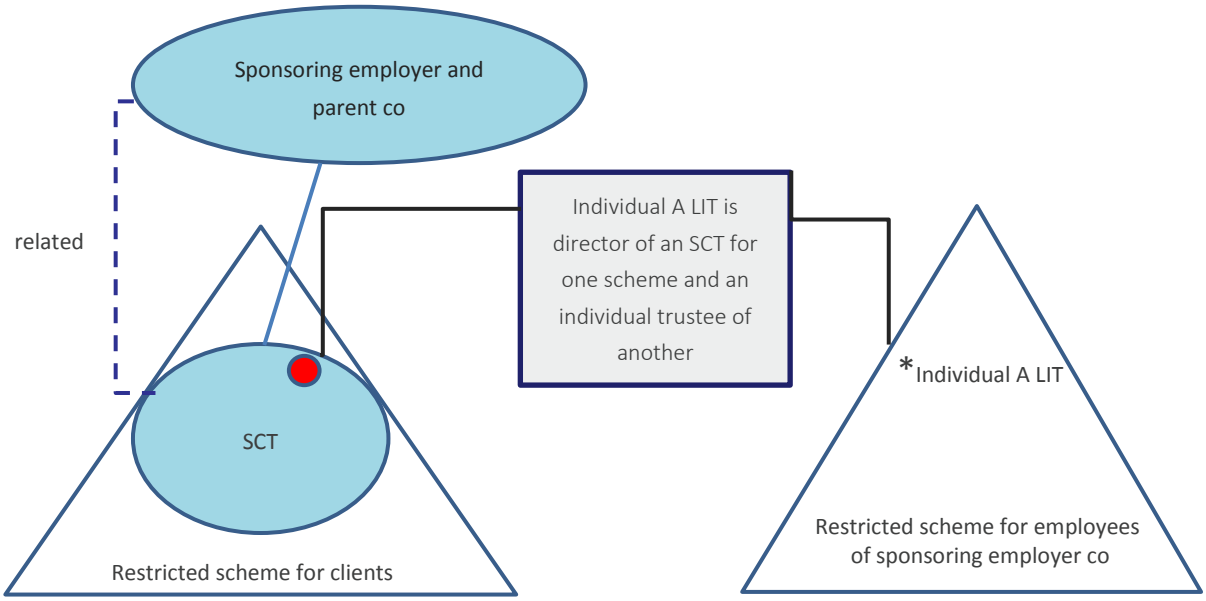
4.13 In this example, the LIT director is a director of a body corporate (the SCT) that is related to the employer who is sponsoring the restricted scheme for employees. This means the LIT director is not independent based on section 131(3)(b) and (c) and what's defined as a 'related body corporate'.

4.14 Among other situations, this will occur when the SCT is set up by the employer or the employer's holding company, or more generally when the SCT is within the same group as the employer. We understand this is a common existing structure.

Situation C: A licensed independent trustee acts for two or more related restricted schemes where one has a related sole corporate trustee, and one scheme is offered to employees

4.15 When a company has two restricted schemes, there is a question of whether the same LIT can meet the independent requirement for each scheme.

4.16 An example is where there are two restricted schemes, one of which is for employees. The restricted scheme offered to employees has trustees who are individuals, including an LIT. The other restricted scheme has an SCT that has the same LIT as a director.



4.17 In this situation, the LIT would not meet the definition of 'independent' for the scheme for employees, based on section 131(3)(b) and (c), and what's defined as a 'related body corporate'. This is because the LIT is a director of an SCT that is a related body corporate of the employer sponsoring the restricted scheme for its employees.

4.18 Note that the LIT would also not be independent for the other restricted scheme. This is the situation in B above.

Solution proposed for situations A and B

4.19 The 'independent' requirement in situations A and B can be met by setting up a structure where an SCT is not a related body corporate of either the sponsoring employer, or the administration or investment manager. However, there would be a cost to doing this, and we do not think it would result in the LIT having any greater degree of independence.

4.20 Further, our view is the 'independent' requirement in section 131(3) is not intended to drive the corporate structure of organisations that have an administration manager or investment manager in the same group of companies as a restricted scheme's SCT, nor is it intended to prevent employers from setting up an SCT subsidiary when they are offering a restricted scheme to employees.

4.21 Our view is that the independence of an LIT should be considered without taking into account the SCT's relationships. To determine whether a person is 'independent' as defined in section 131(3) requires an assessment of whether the individual who is the LIT, has any relationships (other than the person's role as director of the SCT) with any of the following:

- the restricted scheme's administration manager or investment manager
- the employer providing employees access to the restricted scheme
- other related body corporates of the employer

- other related body corporates of the administration manager or investment manager.

4.22 Our view is a legislative amendment may be able to ensure the 'independent' requirement works effectively in situations A and B. We understand that the Ministry of Business, Innovation, and Employment has identified this matter as one for potential legislative amendment. However, it is not possible for any legislative amendment to be in place before the deadline for schemes to comply with the FMC Act. Therefore, our view is an exemption is appropriate for the period until legislative amendment can be considered.

Proposed exemption

4.23 We propose an exemption from the independence requirement in section 131(1)(d) for a restricted scheme where its trustee is an SCT. We propose to exempt restricted schemes with an SCT from having an LIT director who is independent under section 131(3) on the condition that the LIT director is independent under a modified 'independent' requirement.

4.24 Our proposal is for the modified independent requirement to replicate the criteria of 'independent' in section 131(3), but explicitly exclude an SCT's relationships where an LIT acts as a director of the SCT of any restricted scheme. We expect this will resolve the issues outlined in situations A and B.

4.25 We also propose an exemption from the on-going registration requirements in section 133 of the FMC Act, to the extent that the section requires continued compliance with the 'independent' requirement in section 131. The effect of this is the LIT is required to meet the modified definition of 'independent' only.

Solution proposed for situation C

4.26 The 'independent' test could be met by appointing a different LIT in situation C. That would result in more cost. However, we do not think there is a policy reason for related restricted schemes not to use the same LIT. Also, we are aware there is only a limited pool of LITs. This means it may be impractical in many cases.

4.27 As explained above it is the LIT's independence of a restricted scheme and its related entities that is important, and not the SCT's relationships. If an LIT is independent for one restricted scheme, it should be able to perform the same LIT function for a related restricted scheme.

4.28 Therefore, we propose an FMA exemption to allow related restricted schemes to use the same LIT.

Proposed exemption

4.29 We think the exemption proposed for situations A and B will also resolve the issue in situation C.

Questions

4.1 Do you agree with our interpretation that the LIT does not meet the independent test in situations A, B and C? Please provide reasons for your response.

4.2 Do you agree the cost of setting up an alternative structure to comply with the current independent test in situations A and B would not add to the LIT's degree of independence (and so be of no additional benefit to investors)? Please comment.

4.3 Do you see any negative impact of allowing an individual who is an LIT to act for two related restricted schemes (ie, situation C)? Please provide reasons for your response.

4.4 Do you agree the proposed conditions, which focus the independent requirement on the LIT's relationships rather than the SCT's relationships, would provide appropriate protections to investors in situations A, B and C?

4.5 What cost savings and other benefits do you see would arise from the proposed exemption? If possible, please provide estimates.

4.6 Are you aware of restricted schemes with LITs that face the difficulty discussed? Please advise the names of the schemes.

4.7 Are there any other commonly used structures where the LIT will not meet the independent test?

4.8 Do you agree this proposed exemption is both necessary and appropriate? Please explain your reasons. If there is a particular aspect of the proposal you do not consider necessary and appropriate, please identify that, and explain your reasons.

4.9 Are there any other negative impacts or risks with how we propose to apply the modified 'independent' requirement for LITs who are directors of an SCT?

4.10 Do you have any other comments on our proposals?

Feedback form: Exemptions impacting overseas businesses, and restricted schemes

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Exemptions impacting overseas businesses, and restricted schemes: [your organisation's name]' in the subject line. Thank you.

Submissions close on 24 March 2016.

Date: Number of pages:

Name of submitter:

Company or entity:

Organisation type:

Contact name (if different):

Contact email and phone:

Question or paragraph number	Response
You don't need to quote from the consultation document if you note the paragraph or question number.	

Feedback summary – *if you wish to highlight anything in particular*

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.