

# FMI STANDARD 1: LEGAL BASIS

FS1



## DOCUMENT VERSION HISTORY

1 March 2024	First issue date
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## INTRODUCTION

### Application

- i. This standard applies to every operator of a designated FMI that was specified in its designation notice under section 29(2)(f) of the Financial Market Infrastructures Act 2021 (the **Act**) as falling within one or more of the following classes of designated FMIs:
  - (a) a pure payment system; or
  - (b) a securities settlement system; or
  - (c) a central securities depository; or
  - (d) a central counterparty.

### Legal powers

- ii. Under section 8 of the Act the regulator is defined as the RBNZ and the FMA acting jointly (or the RBNZ acting on its own in relation to pure payment systems).
- iii. Section 12 of the Act provides the regulator's functions. These include regulating designated FMIs, dealing with designated FMIs that are distressed, and other functions under the Act.
- iv. Subject to certain statutory prerequisites, section 31 of the Act empowers the regulator to make standards for designated FMIs.
- v. Section 34 sets out the matters that standards may deal with or otherwise relate to. Section 34(1)(e)(vi) provides that a standard may deal with, or otherwise relate to, the management of legal risk, while section 34(1)(a) provides that a standard may deal with, or otherwise relate to, the governance of operators of designated FMIs.

### Interpretation

- vi. Words and phrases used in this standard have the same meaning as in the Act.
- vii. **Essential services** means:
  - (a) for services provided by designated FMIs which are assessed as systemically important by the regulator under section 24 of the Act, all services contributing to the assessment that an FMI is systemically important; and
  - (b) for services provided by designated FMIs that are not assessed as systemically important under section 24 of the Act, any services covered by the protections in subpart 5 of part 3 of the Act.
- viii. **Material aspects of an FMI's activities** means those activities that relate to the provision of essential services by the FMI.

- ix. **Relevant jurisdiction** means any jurisdiction in which the FMI operates, and will always include New Zealand.

### Commencement

- x. This standard comes into force on 1 March 2024.

## REQUIREMENTS

- 1) An operator must ensure that the FMI has rules and contracts that are legally enforceable in respect of all material aspects of the FMI's activities in all relevant jurisdictions.
- 2) Further to the requirements in clause (1) an operator must ensure that:
  - a) in operating the FMI, it:
    - i) provides a high degree of certainty for each of the material aspects of the FMI's activities in all relevant jurisdictions; and
    - ii) is supported by a legal opinion that demonstrates the enforceability of the FMI's rules and contracts across all relevant jurisdictions; and
    - iii) this legal opinion should be reviewed and updated where required at least every two years or whenever there are material changes that may have an impact on the opinion; and
  - b) it has rules and contracts in relation to the FMI that are clear, enforceable, and consistent with relevant laws and regulations in all relevant jurisdictions in which the FMI operates, including New Zealand; and
  - c) it can demonstrate the enforceability of all material aspects of the FMI's activities to the regulator, participants, and, where relevant, participants' customers, in a clear and understandable way; and
  - d) there is a high degree of certainty that actions taken by an operator under the rules will not be voided, reversed, or subject to stays; and
  - e) where the FMI operates in multiple jurisdictions, an operator identifies and mitigates the risks arising from any potential conflict of laws across those jurisdictions.

*(See Guidance for Standard 1: 'Legal Basis', in Guidance for the FMI Standards for more detail).*