



## **Memorandum of Understanding**

between

**Financial Markets Authority**

and

**Insurance & Financial Services Ombudsman Scheme**

**Memorandum of Understanding** dated

13 December 2021

Between

**Financial Markets Authority (FMA);**

And

**Insurance & Financial Services Ombudsman Scheme (the IFSO Scheme).**

## **1. Roles and responsibilities of FMA and the IFSO Scheme**

- 1.1 The FMA is an independent Crown entity established under the Financial Markets Authority Act 2011 (**FMA Act**), with statutory functions under that Act and the Acts listed in Schedule 1 of that Act. The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. It monitors, investigates, and enforces compliance with securities, financial reporting, and company law as they apply to financial markets participants and financial markets. The FMA regulates securities exchanges, financial advisers and brokers, discretionary investment managers, derivative issuers, statutory supervisors, and managed investment schemes (including KiwiSaver).
- 1.2 The IFSO Scheme is an approved dispute resolution scheme under section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSPR Act**). Its purpose is to resolve disputes between financial service providers and consumers and to do so in a way that is accessible, independent, fair, accountable, efficient and effective, in accordance with the FSPR Act.
- 1.3 The parties have agreed to enter into this Memorandum to record the basis upon which they will endeavour to assist each other in the performance of their respective functions.

## **2. Principles**

- 2.1 This Memorandum is a statement of the intent of the FMA and the IFSO Scheme to consult, cooperate and exchange information in relation to financial services providers (as defined in the FSPR Act) that are members of the IFSO Scheme ("Participants"). The consultation, cooperation and exchange of information will assist both the FMA and the IFSO Scheme to achieve their complementary objectives and facilitate fair, efficient and transparent financial markets and investor confidence in financial service providers.
- 2.2 The FMA and the IFSO Scheme anticipate that cooperation will be primarily achieved through ongoing information sharing, supplemented when necessary by more in-depth cooperation. The provisions of this Memorandum are intended to support such cooperation as well as to facilitate the exchange of information where necessary and permitted by law.
- 2.3 The FMA's ability to share information it holds in relation to the exercise and its powers or the performance of its functions and duties is governed and limited by section 59 of the FMA Act. That

section prohibits the FMA from publishing or disclosing information or documents that are supplied or disclosed to, or obtained by, the FMA under the FMA Act or any financial markets legislation (as defined in the FMA Act) unless the publication or disclosure of the information or document is to certain persons (as set out in section 59(3)). Such persons include a person who the FMA is satisfied has a proper interest in receiving the information or document. The FMA will therefore only disclose or supply other information to the IFSO Scheme under this Memorandum where the disclosure is permitted under section 59(3) of the FMA Act. Furthermore, the FMA may, by written notice, impose any conditions on the IFSO Scheme in relation to the publication, disclosure, or use of information or documents provided to it by the FMA in accordance with section 60 of the FMA Act.

- 2.4 The FMA acknowledges that the IFSO Scheme's ability to share information with the FMA is limited by the IFSO Scheme's Terms of Reference (TOR). The TOR provide that the IFSO Scheme must not disclose to the FMA any information concerning a complaint the IFSO Scheme has received that would make it possible to identify a Complainant or a Participant, or any other information of a confidential nature, except under circumstances specified in the TOR. Those exceptions include when authorised by the party identified or as required by law.
- 2.5 The IFSO Scheme must disclose information to the FMA if the IFSO Scheme has reasonable grounds to believe that a Participant which is a financial markets participant (as defined under s4 of the FMA Act) has contravened or is likely to contravene any financial markets legislation in a material respect (refer to section 67 of FSPR Act).
- 2.6 The TOR allow the IFSO Scheme to disclose information to the FMA where it identifies, in the course of an investigation of a complaint, a breach or possible breach by a Participant of the law, a Code, or an obligation imposed on a Participant under the TOR or the IFSO Scheme's Constitution. Subject to relevant legislation and the TOR, the FMA and the IFSO Scheme agree that in their dealings with each other as contemplated under this Memorandum they will:
  - (a) act in good faith, and approach issues in a timely, collaborative, open, and transparent manner;
  - (b) cooperate in the performance of their respective functions;
  - (c) seek to achieve a complementary and consistent approach, so far as it is appropriate given their independent roles and respective objectives and obligations;
  - (d) endeavour to keep each other informed, and to exchange information and views, in areas relevant to each other's responsibilities, where appropriate, including through regular meetings;
  - (e) identify opportunities to coordinate activities in order to enhance efficiency, promote consistency, and avoid unnecessary duplication in the regulation of financial service providers (as defined in the FSPR Act); and
  - (f) maintain an appropriate degree of transparency on principles and practices relating to the performance of their respective functions.

- 2.7 In accordance with the principles of consultation, cooperation and exchange of information, but without limiting their general application, both parties agree to make relevant information available to the other as set out in clause 3, and subject to any legislative requirements.

### **3. Information Sharing**

- 3.1 The FMA and the IFSO Scheme agree that they will work together to determine what thematic reporting may be possible by the IFSO Scheme to the FMA on a periodic basis and in a form to be agreed between the parties.
- 3.2 The IFSO Scheme will provide quarterly reports to the FMA with data relating to complaints, enquiries, and disputes it receives in relation to financial service providers in a form agreed between the parties. The parties acknowledge that the form of the report may change periodically.
- 3.3 The FMA will provide quarterly reports to the IFSO Scheme relating to complaints it receives in relation to financial service providers. The form of the report shall be as agreed between the FMA and the IFSO Scheme from time to time, but will include information about the number and general characteristics of the complaints.
- 3.4 In the event that the FMA requests information that the IFSO Scheme holds for the purposes of performing or exercising its functions, powers, or duties under the FMA Act, or any provision of financial markets legislation (as defined in the FMA Act), the FMA will first seek to receive the information on a voluntary basis from the IFSO Scheme. Should the IFSO Scheme not be able to voluntarily supply the information, the IFSO Scheme acknowledges that the FMA may issue a notice under section 25 of the FMA Act which will compel the IFSO Scheme to provide the information specified in the notice.

### **4. Referrals**

In some instances, the FMA receives complaints which may be suitable for referral to the IFSO Scheme. To support the efficient and effective resolution of complaints, the FMA will develop an internal process to ensure complainants are aware of the services the IFSO Scheme offers for appropriate complaints.

### **5. Meetings**

In order to facilitate regular contact between the parties to review the operation of this Memorandum and the cooperation and coordination between the parties, the FMA and the IFSO Scheme commit to meet at least annually.

### **6. Contact Persons**

All communications between the FMA and the IFSO Scheme should be between the principal points of contact as communicated by the parties to each other from time to time.

## **7. Confidentiality**

- 7.1 For the purposes of this Memorandum “Confidential Information” includes all information, whether written or oral or by any other means, relating to any engagement between the parties pursuant to this Memorandum and all information provided by a party in accordance with this Memorandum, other than information that:
- (a) is in or comes into the public domain through no fault of the relevant party or any of its officers, employees, agents or contractors;
  - (b) was and can be demonstrated to have been, lawfully in the relevant party's possession or known to the relevant party before its disclosure; or
  - (c) is disclosed to the relevant party by a third party having no obligation of confidentiality in relation to that information.
- 7.2 Each party agrees:
- (a) to keep confidential all Confidential Information; and
  - (b) to use the Confidential Information solely for the purposes of performing its functions.
- 7.3 The parties will abide by all relevant privacy obligations and legislation and not disclose any personal information which it is not permitted to disclose to the other party, or which the disclosure of, would amount to a breach of any privacy obligations or legislation or governing rules that apply to that party.
- 7.4 The FMA must be satisfied that appropriate protections are in place for maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 2020) prior to its disclosure, in accordance with section 59(4) of the Financial Markets Authority Act 2011.
- 7.5 Nothing in this Memorandum will prevent the disclosure of information that is required or permitted to be disclosed by law. Where either party is required by law to disclose information obtained under this Memorandum or intends to disclose information obtained under this Memorandum which it is expressly permitted by statute to disclose in the particular circumstances, the disclosing party will notify the other party in writing as soon as practicable.

## **8. Legal Nature of Memorandum**

- 8.1 This Memorandum is intended to be facilitative only and to assist the FMA and the IFSO Scheme in the performance of their respective functions, and is not intended to create legally enforceable rights or obligations.
- 8.2 Without limiting clause 3.1:
- (a) nothing in this Memorandum limits the exercise by the FMA of any of its powers or the performance by the FMA of any of its functions under the FMA Act or any other

legislation, or requires the FMA to act in a particular manner in the exercise of its powers or the performance of its functions;

- (b) nothing in this Memorandum limits the exercise by the IFSO Scheme of any of its powers or the performance by the IFSO Scheme of any of its functions under the FSPR Act or other legislation or its TOR or Constitution, or requires the IFSO Scheme to act in a particular manner in the exercise of its powers or the performance of its functions;
- (c) nothing in this Memorandum requires or obliges either party to provide any information to the other except as regulated by law under financial markets legislation or other relevant legislation.

8.3 This Memorandum does not affect any right of the FMA or the IFSO Scheme to communicate with or obtain information or documents from any person (as defined in the FSPR Act).

## **9. Disputes**

Where there is a disagreement over any matter related to issues in this Memorandum, the parties will seek to resolve the issue by negotiation at an operational level. If these negotiations fail, the matters will be referred to the Chief Executive Officers of each party for discussion and resolution.

## 10. Term and Review

- 10.1 This Memorandum will continue in full force and effect unless and until terminated in the following manner:
- (a) by agreement of both parties; or
  - (b) by either party on not less than 1 month's written notice to the other party.
- 10.2 Upon termination of this Memorandum, the parties must meet, as soon as practicable, to discuss and agree the process by which any joint initiatives or protocols developed under this Memorandum will be terminated. This includes ensuring, to the maximum extent possible, that their respective interests and objectives and on-going performance of their respective functions are not prejudiced by such termination beyond the extent of any prejudice necessarily caused by virtue of the termination.

### Execution

Signed for and on behalf of

Financial Markets Authority



\_\_\_\_\_  
Acting Chief Executive

Date: 10 December 2021

Signed for and on behalf of

Insurance & Financial Services Ombudsman Scheme



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Ombudsman

Date: 13 December 2021

