

31 October 2019

# Guidance note: Supervisor licensing

This guidance note is for anyone applying:

- for a licence to be a supervisor, or
- to replace an expiring supervisor licence, or
- to vary an existing supervisor licence.

It gives guidance on:

How to apply for a licence and the criteria for licensees.

## About FMA guidance

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### Our guidance:

- explains when and how we will exercise specific powers under legislation
- explains how we interpret the law
- describes the principles underlying our approach
- gives practical examples about how to meet obligations.

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**Guidance notes:** provide guidance on a topic or topic theme. Typically we will seek industry feedback via a public consultation paper, or more targeted consultation before we release a guidance note.

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

You might also like to check the reports and papers on our website. For example, our monitoring reports describe actual practice we are seeing and our comments on this.

### Document history

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This version updates the original version released in 2011.

[www.fma.govt.nz](http://www.fma.govt.nz)

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# Part A: Introduction

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1. The Financial Markets Supervisors Act 2011 (FMS Act) and the Financial Markets Supervisors Regulations 2014 (the Regulations) have provisions for how supervisors are licensed.
2. The purpose of the FMS Act is to protect the interests of product holders and of residents of retirement villages. The Act also enhances investor confidence in the financial markets and retirement villages by:
  - a. requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions
  - b. requiring supervisors to be effective in performing their functions
  - c. ensuring supervisors are held accountable for any failure to effectively perform their functions.
3. Under the FMS Act, a person who wishes to be appointed as a supervisor for a debt security, a registered scheme, or retirement village, needs a licence from the Financial Markets Authority (the FMA).

## What is this guidance for?

4. This guidance note is for persons applying for a supervisor's licence, to replace an expiring licence or to vary an existing licence. It explains the key steps involved in licensing. It also specifies the licensing criteria and describes the information we require to decide whether an applicant is capable of effectively performing the functions of a supervisor for a debt security, registered scheme or retirement village covered by the licence applied for.<sup>1</sup>

## Confidentiality of applicants' information

5. Information held by us is subject to the Official Information Act 1982 (OIA). The Financial Markets Authority Act 2011 (FMA Act) requires us to maintain confidentiality on all information supplied or disclosed to us. This will apply to information provided in licence applications; especially where information supplied is commercially sensitive.

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<sup>1</sup> This is the statutory test for licensing supervisors set out in section 16(1) of the Act. We will not issue a licence to a supervisor unless we are satisfied that the applicant is capable of effectively performing the functions required of the licensee.

# Part B: About the licensing process

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## Overview

6. The licensing process covers:
  - a new licence
  - a variation to an existing licence (for example, adding a licence class)
  - a replacement licence for an expiring licence.

## Applying for a new licence or to replace an expiring licence

### ***Applications***

7. Use application form [TRU1.1](#) to apply for a new licence or to replace an expiring licence. Forms are found on our website under the section on '[Licensing and registration](#)'.
8. Use [TRU 2.1](#) to provide supporting information. Supporting information requirements are detailed in this guidance note under 'Part C: Licensing criteria'.
9. A statutory declaration [form DIR 1.1](#) must be completed and submitted for each and every director and senior manager unless the director or senior manager has submitted such a statutory declaration form to us in the previous 12 months.
10. Completed PDF versions of the application form, declarations and supporting forms can be submitted to the FMA by email to [licensing@fma.govt.nz](mailto:licensing@fma.govt.nz). Alternatively, the completed application form and supporting documents can be submitted in one package to the FMA addressed to:

Licensing Manager  
Level 2  
1 Grey Street  
PO Box 1179  
Wellington 6140

11. Licensed supervisors must, between nine and 12 months before the expiry date of a current licence, make an application for a new licence. We will make a decision on the application no later than three months before the expiry date.

## Licence fee

12. The application fee for a new or replacement licence is determined by the Financial Markets Authority (Fees) Regulations 2011 and is **\$8,021.25** (inclusive of GST). Where time worked on an application by members and employees of FMA exceeds 52 hours, we will write to tell the applicant why, and charge the applicant (additional) hourly fees:
  - a. for each hour of work by a qualified or professional employee of the FMA \$178.25
  - b. for each hour of work by a member of the FMA \$230
13. The same fee applies to all application types irrespective of the number or type of supervisor's roles being applied for. The fee must be paid at the time the application is made. We will only consider an application after the licence fee has been paid. The fee is not refundable if the licence application is rejected.
14. Payment options and instructions are included in the application form and below

## Applying to vary a licence

### Applications

15. Applications to vary a licence must be made using form [TRU1.1 Var](#). Forms are available on the 'Licensing and registration' page of our website.
16. Supporting information for the application must be made using form [TRU 2.1 Var](#). The supporting information required is found in this guidance note under *Part C: Licensing criteria*. Please note the requirements. Where supporting information provided with an earlier licensing application remains current, you can refer to the relevant sections made in your earlier application. However, you must use the current form to provide updated supporting information or other relevant information in your application to vary an existing licence.
17. The form [DIR 1.1 Var](#) must be completed and submitted for each and every director and senior manager unless the director or senior manager has submitted such a statutory declaration form to us in the previous 12 months.
18. Completed PDF versions of the application form, declarations and supporting forms can be submitted to the FMA by email to [licensing@fma.govt.nz](mailto:licensing@fma.govt.nz). Alternatively, the completed application form and supporting documents can be submitted in one package to the FMA addressed to;

Licensing Manager  
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1 Grey Street  
PO Box 1179  
Wellington 6140

## Licence fee

19. The application fee to vary a licence is determined by the Financial Markets Authority (Fees) Regulations 2011, and is **\$115** (inclusive of GST). We will also charge an hourly rate:
  - a. for each hour of work by a qualified or professional employee of FMA \$178.25
  - b. for each hour of work by a member of FMA \$230

20. The same fee applies for all applications to vary a licence. The fee must be paid at the time the application is made. A licence application will not be considered until the licence fee has been paid. The licence fee is not refundable if the licence application is rejected.
21. Payment options and instructions are in the application form and below.

## How to pay

Payment option	How do I pay?	Additional information
<b>Internet banking</b>	Select the bill payment option. Our bank details are: <b>Bank name:</b> Westpac <b>Account name:</b> Financial Markets Authority <b>Account number:</b> 03 0584 0198005 002	To ensure we process your payment correctly you need to provide the following information: <b>Particulars:</b> Full name of business applying for the licence <b>Code:</b> Supervisors <b>Reference:</b> FSP number (if registered)
<b>Westpac branch</b>	Call in to your nearest Westpac branch and pay your fee by cash, cheque, Eftpos or Smart ATM.	To ensure we process your payment correctly you need to provide the following information: <b>Particulars:</b> Full name of business applying for the licence <b>Code:</b> Supervisors <b>Reference:</b> FSP number (if registered)

Please note that payment by Credit Card is not available for this application process.

## Licence duration and conditions

22. We may grant a licence for up to eight years. The duration of the licence granted will be assessed on a case-by-case basis.
23. The FMS Act enables us to impose conditions on a licence. The applicant will be notified of the proposed licence conditions before being granted a licence. Applicants will have an opportunity to comment on the conditions. We will also seek information on how the applicant will comply with the proposed conditions.
24. We are not restricted by the FMS Act on what conditions we can impose. Conditions may also be tied to the original application criteria set out in section 16 of the FMS Act and the regulations.
25. If we decide to introduce industry-wide conditions, we will consult on the conditions proposed.
26. We are required to consult:
- the Reserve Bank of New Zealand for licence applications that cover debt securities issued by deposit takers
  - the Registrar of Retirement Villages for licence applications that cover retirement villages.

## Appeal rights

27. Before declining to issue a licence, or before we issue a licence other than that proposed in the application, we will notify you in writing. We will explain the reasons for declining or varying the licence applied for. We will also give the applicant the opportunity to make written submissions, and listen to responses on the matter. We are required to give the applicant at least 10 working days' notice to make a written submission and be heard.
28. If we reject a licence application or a licence variation, the applicant may appeal to the High Court within 20 working days of receiving such a decision from us.

# Part C: Licensing criteria

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## Overview

29. Section 16 of the FMS Act sets out what we must be satisfied with and what we need to assess before granting a licence.
30. The regulations supplement the FMS Act on specific matters that we must consider when making a decision under section 16.
31. The regulations, however, do not limit the matters we may consider in assessing the applicant. The licensing criteria outlined below include the information required by the FMS Act and Regulations, and the additional information we will consider in the application.
32. The relevant FMS Act and (where applicable) the regulations requirements are described in the box headings. You can find details of each of the licensing criteria for an applicant required by the FMS Act, and the regulations under the heading 'FMA requirements'.
33. Please refer to Part B of this Guidance Note for information on how to submit this documentation.
34. The licensing criteria can be divided into three main types.
  - a. Licensing criteria: General — what we must be satisfied with:
    - i. business details
    - ii. good character
    - iii. compliance with the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP (RDR) Act)
  - b. Licensing criteria: Supervisor's function — what we will assess:
    - i. experience, skills and qualifications
    - ii. compliance controls
    - iii. compliance monitoring.
  - c. Licensing criteria: Whole business — what we will assess:

- i. financial resources
- ii. other resources
- iii. independence
- iv. governance
- v. professional indemnity insurance
- vi. other matters

## Licensing criteria: General

35. We require the following details from applicants:

### ***Business details***

#### Relevant Act requirements

16(2)(a)

FMA may not issue a licence unless the FMA is satisfied that the applicant meets the following requirements:

- a) the applicant is:
  - i. a body corporate that is incorporated in New Zealand or
  - ii. an overseas company (as defined in the Companies Act 1993) registered under that Act.

#### Relevant regulation requirements

n/a

### ***FMA requirements***

36. The applicant must provide:

- a. a copy of its certificate of incorporation or
- b. if an overseas company (as defined in the Companies Act 1993), a copy of its certificate of registration.

## **Good character**

### **Relevant Act requirements**

16(2)(b)

FMA may not issue a licence unless the FMA is satisfied that the applicant meets the following requirements:

- b) every director<sup>2</sup> and senior manager<sup>3</sup> of the applicant is of good character.

### **Relevant regulation requirements**

#### **Reg 4**

(1) The matters that the FMA must consider in satisfying itself that every director and senior manager of an applicant is of good character for the purposes of section 16(2)(b) of the Act are whether the director or senior manager has been –

- a) the subject of a successful relevant proceeding or action or
- b) refused registration or other entry into, or restricted from the right to carry on, any profession or occupation that is relevant to the role of a director or senior manager.

(2) Paragraphs (a) and (b) of sub clause (1) apply to the extent that the FMA is aware of the matters referred to in those paragraphs.

(3) Sub clause (1) does not limit the matters that the FMA may consider in satisfying itself that every director and senior manager of an applicant is of good character for the purpose of section 16(2)(b) of the Act.

## **FMA requirements**

- 37. The applicant must provide a statutory declaration for every director and senior manager on form DIR1.1. (or form DIR 1.1 Var to vary a licence), unless the director or senior manager has submitted such a statutory declaration form to us in the previous 12 months.
- 38. We will also consider other sources of information at our discretion.
- 39. The good character of senior managers and directors is a fundamental licensing requirement. If we receive adverse information on a director's or senior manager's character, we will consider whether licensing the applicant is likely to contribute to the Act's purpose as set out in section 3 of the Act<sup>4</sup>.
- 40. We will consider on a case-by-case basis applicants who have a history of criminal convictions or other adverse information that relates to character, taking into account:
  - a. the relevance of convictions or information to the role of supervisor
  - b. the seriousness and the circumstances of the surrounding conviction(s) or conduct
  - c. evidence of any rehabilitation.

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<sup>2</sup> The definition of director for the purpose of this Act is listed in Appendix 1.

<sup>3</sup> The definition of senior manager for the purpose of this Act is listed in Appendix 1.

<sup>4</sup> Section 3 of the Act is listed in Appendix 1.

41. We will not issue a licence to any applicant where we have outstanding questions or concerns about the good character of its directors and/or senior management. We will raise any such issues with the applicant when processing the application.

## ***FSP (RDR) Act compliance***

### **Relevant Act requirements**

16(2)(c)&(d)

FMA may not issue a licence unless we are satisfied that the applicant meets the following requirements:

(c) in the case of an application for a licence that covers a debt security or a registered scheme the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP (RDR) Act) on and from commencing to perform the functions of a supervisor or

(d) in the case of an applicant for a licence that covers supervision of a retirement village, the applicant complies with section 13(a) of the FSP (RDR) Act.

### **Relevant regulation requirements**

n/a

## ***FMA requirements***

42. The applicant must provide:

- a. proof of its registration under the FSP (RDR) Act or
- b. proof of application for registration under the FSP (RDR) Act or
- c. if the licence application covers a retirement village, proof of compliance with section 13(a) of the FSP (RDR) Act.

43. Please see form TRU2.1 (or form TRU2.1 Var for those seeking to vary a licence) for the licensing requirements.

## **Licensing criteria: Supervisor function**

44. We assess the part of the applicant's business that carries out the supervisor functions.

## ***Experience, skills and qualifications***

### **Relevant Act requirements**

16(3)(a)

Before making a decision the FMA must assess:

the experience, skills and qualifications of the applicant (including, in particular, the applicant's directors and senior managers)

### **Relevant regulation requirements**

Reg 5(1)

FMA must, in assessing the matters referred to in section 16(3)(a), take into account –

a) the number of years of experience that the applicant's directors and senior managers have –

- i. in the roles that they hold in the applicant
- ii. in the financial or retirement village industry
- iii. in business generally; and

b) the extent to which the applicant's directors and senior managers are members of relevant professional bodies (for example, the New Zealand Institute of Chartered Accountants, the New Zealand Law Society, and The Institute of Directors in New Zealand Incorporated).

## ***FMA requirements***

45. The applicant must provide:

- a. the length of time it has been in business as supervisor
- b. an applicant seeking to supervise debt securities and/or registered schemes:
  - i. a description of the types of debt security and/or registered scheme and the business sector (if any) that the applicant's business specialises in supervising
  - ii. whether, in the past seven years, any of the applicant's supervised issuers or managers has:
    - had a material default event
    - moratorium proposal or restructuring proposal to avoid a default event
    - materially breached a trust deed or deed of participation
    - had any other event that led any regulator to investigate the applicant's supervisory functions, and if so, a brief description of what occurred in each instance
- c. a description of the applicant's business plan and strategy for its supervisor business.

- d. a description of the applicant's business continuity plan.
  - e. a description of what capacity and systems the applicant has in place to conduct its supervisor business, and how the applicant assesses the adequacy of that capacity and those systems.
46. The applicant must also provide a curriculum vitae for each director and senior manager. The curriculum vitae should contain:
- a. details of qualifications and memberships with relevant professional bodies held (please see form DIR 1.1 or DIR1.1Var for memberships with professional bodies)
  - b. a brief description of relevant past roles related to Regulation 5(1)(a) (i) to (iii)
  - c. a summary of how those roles are relevant to the duties and functions carried out by the applicant in providing its supervisor service.
47. The applicant should also let us know of any impending departures of its directors and senior managers.

## ***Compliance controls***

### **Relevant Act requirements**

16(3)(d)

Before making a decision the FMA must assess the applicant's procedures for ensuring that the applicant complies with the licensee obligations.

### **Relevant regulation requirements**

Reg 5(4)

FMA must, in assessing the matters referred to in section 16(3)(d), take account of the applicant's practices of peer review and oversight of junior staff.

## ***FMA requirements***

48. Complying with licensee obligations is a fundamental part of a supervisor's role.
49. We expect the applicant to demonstrate how they will comply with the licensee obligations. The applicant must describe:
- a. the policies, procedures and key controls established by the board of directors and senior management to ensure the reporting obligations under the Act are met<sup>5</sup>. As a minimum, the description of these policies, procedures and key controls should include information on:
    - i. how regularly compliance is reviewed
    - ii. who undertakes the review
    - iii. any internal or external auditing undertaken

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<sup>5</sup> The reporting obligations in the FMS Act are contained within sections 25 and 26 of the Act — these are set out in full in Appendix 1.

- iv. the person responsible for compliance
  - v. what happens when non-compliance is identified
  - vi. the escalation framework
  - vii. any systems the applicant has in place to track and monitor compliance
- b. the key controls in place to provide assurance that the applicant is complying with its licensee obligations and that non-compliance with the licensee obligations, if identified, is rectified
  - c. the key controls in the applicant's risk management framework — including the controls and systems it has in place — to identify, monitor and control the risks associated with the supervisor business
  - d. how the applicant assesses the effectiveness of its peer review and junior staff oversight practices and procedures.

## **Compliance monitoring**

### **Relevant Act requirements**

16(3)(e)

Before making a decision the FMA must assess the applicant's procedures for ensuring that:

- (i) in the case of a licence for debt securities or registered schemes, issuers of those debt securities or of managed investment products in those schemes comply with the issuer obligations, and
- (ii) in the case of a licence relating to retirement villages, operators of those retirement villages comply with operator obligations.

### **Relevant regulation requirements**

Reg 5(5)

FMA must, in assessing the matters referred to in section 16(3)(e), take into account –

- a) the reporting obligations that the applicant proposes to require of different types or classes of proposed supervised entities in relevant governing documents; and
- b) the applicant's systems to track whether it has received on time all required documentation from proposed supervised businesses; and
- c) the applicant's systems to record its consideration of reports received from proposed supervised entities and any action taken as a result.

## ***FMA requirements***

50. A fundamental role of the supervisor is monitoring and tracking whether the issuer or retirement village operator complies with its issuer or operator obligations.
51. We will be looking for evidence of how the supervisor instils and maintains a culture of compliance and proactive investigation activities.
52. To help us in this assessment, the applicant must provide:
  - a. a description of the governing documents' reporting obligations the applicant requires from the supervised businesses, including:
    - i. their standard reporting requirements (by class of supervised interest), and a description of when the applicant would consider tightening or relaxing these
    - ii. the supervised businesses' reporting lines to the applicant, and in what circumstances the applicant would report matters and concerns to a supervised entities board
    - iii. who within the supervised interest has overall responsibility for signing off on the required reports, and whether the applicant requires management sign-off, and on which matters
  - b. a description of the systems and controls that demonstrate how all reports required from supervised businesses are received on time, and are appropriately reviewed, assessed and acted upon
  - c. the policies for providing feedback to supervised businesses to improve the quality of material and information received, and controls to ensure applicant compliance
  - d. a description of the policy for determining whether the terms and conditions in the supervised businesses' governing documents are adequate and suitable for the nature of the businesses; and how often the applicant assesses this. This should include a description of the process for new mandates, existing mandates and newly established governing documents
  - e. a summary of the processes in place to ensure supervised businesses are complying with their issuer or operator obligations, including how and how often compliance is reviewed. It should also include a description of what system, if any, is used to monitor compliance
  - f. a description of the policies and procedures used to ensure that supervised entities are complying with any corrective actions imposed by the supervisor, including a description of how the supervisor monitors compliance with an action plan
  - g. a summary of the procedures in place to deal with varying levels of supervised interest distress, through to the failure of an issuer/operator, including how such issues are monitored and escalated by the applicant
  - h. a summary of the applicant's policy for receiving and handling investor complaints.

## **Licensing criteria: Whole business**

53. The information below shows the matters the FMA must assess for the applicant's whole business.

## **Financial resources**

### **Relevant Act requirements**

16(3)(b)

Before making a decision the FMA must assess the financial resources available to the applicant.

### **Relevant regulation requirements**

Reg 5(2)

FMA must, in assessing the matters referred to in section 16(3)(b), take into account

- a) the assets of the applicant, the form the assets take, and the ratio of liquid to illiquid assets; and
- b) whether the applicant would be able to absorb the cost if one or more of the proposed supervised entities were to fail, and if the applicant were not paid for its services; and
- c) any bank overdraft resource available to the applicant; and
- d) the financial strength of the applicant's shareholders or owners; and
- e) any guarantees or financial arrangements that the applicant has with any associated persons and;
- f) the estimated assets and liabilities of the proposed supervised entities; and
- g) the estimated assets and liabilities of the registered schemes the supervision which is proposed to be covered by the applicant's licence.

## **FMA requirements**

- 54. The applicant must show us that it has sufficient financial resources and independence to support and develop the supervisor business. The applicant must also show that it has appropriate financial risk management policies, including the ability to withstand financial shocks such as the failure of an issuer it supervises.
- 55. The applicant must be able to show us they have arrangements to ensure they have adequate resources to provide the level of supervision required by the Act.
- 56. To show this, the applicant must provide:
  - a. a copy of its most-recent financial statements prepared according to the Financial Reporting Act 1993, including a general description of all the assets of the applicant and the ratio of liquid to illiquid assets<sup>6</sup>
  - b. a general description of the applicant's revenue streams, including details of its fee structure

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<sup>6</sup> **Liquid** in this context means: **cash** – made up of cash on hand and demand deposits; and **cash equivalents** which are short term, highly liquid investments that are readily convertible to known amounts of cash, and which are subject to an insignificant risk to changes in value. **Illiquid** in this context means everything else.

- c. a description of its liquidity risk, credit risk and capital risk management<sup>7</sup> policies
- d. a list of individual supervised entities that makes up five percent or more of the applicant's revenues, and a description of how they manage dependencies and other risks associated with these revenue concentration
- e. details of any other material revenue dependencies not captured by the information provided in (d) (for example where multiple supervised entities are controlled by the same party). The applicant is required to complete the form in **Appendix 2** to show what percentage of the applicant's revenue comes from individually supervised businesses
- f. a description of the key terms of significant funding facilities and other sources of committed finance available to the applicant (such as details of the undrawn balance as at the date of application), including:
  - i. the counterparty
  - ii. the total amount of the facility
  - iii. the term of the facility
  - iv. security for the facility
- g. a list of the applicant's owners (including the controlling owner (as defined in section 4 of the FSP (RDR) Act)) or shareholders; a general description of their financial positions and whether the applicant's owners or shareholders regularly provide support to; or guarantee any of the obligations of the applicant
- h. a summary of arrangements or guarantees (both provided to and given by the applicant) the applicant has with any associated persons<sup>8</sup>
- i. a list outlining, for each proposed supervised interest<sup>9</sup>, an estimate of the:
  - i. total assets
  - ii. total liabilities
  - iii. unit holder's funds/equity

## **Other resources**

### **Relevant Act requirements**

16(3)(c)

Before making a decision the FMA must assess the other resources available to the applicant.

### **Relevant regulation requirements**

Reg 5(3)

<sup>7</sup> Capital risk management policy in this context will show how the applicant makes decisions on how it funds its business, including what levels of equity it maintains for its debt, and how any dividends are paid.

<sup>8</sup> The definition of associated person is set out in Appendix 1

<sup>9</sup> For proposed supervised entities made up multiple schemes, this information should be provided at scheme level

FMA must, in assessing the matters referred to in section 16(3)(c), take into account of:

- a) the number of staff employed by the applicant who are involved in supervisor work, and the training those staff have received; and
- b) the number of support staff employed by the applicant; and
- c) the applicant's access to legal and other professional services; and
- d) the applicant's office facilities and infrastructure.

## ***FMA requirements***

57. The applicant must provide:

- a. information on the number of employees or contractors who are involved in supervisor work, including support staff
- b. a brief description of the functions of those employees or contractors
- c. a brief summary of training plans, and a brief description of training undertaken by the staff identified in (a.) in the previous 12 months
- d. how the staff identified in (a.) are separated from other functions in the applicant's business
- e. a brief description of the staff's supervisory expertise for each of the classes of debt security, registered scheme, or retirement village for which a licence is being sought
- f. the key controls the applicant has for managing key personnel risk
- g. a description of the applicant's business succession and business growth plans
- h. details of the applicant's infrastructure, including:
  - i. the address(es) of office location(s)
  - ii. the applicant's information technology system(s), including a brief description of the suitability of the system(s) for performing the functions of a supervisor and how the system(s) is audited
  - iii. a summary of how the applicant accesses legal advice and other professional services, including details of any appointed service providers.

## ***Independence***

### **Relevant Act requirements**

16(3)(f)

Before making a decision FMA must assess the applicant's independence from issuers, or from operators covered by the licence.

### **Relevant regulation requirements**

Reg 5(6)

FMA must, in assessing the matters referred to in section 16(3)(f), take account of:

- a) the ownership of the applicant; and
- b) any relationships that the applicant has, or its directors and senior managers have, with the proposed supervised entities ;and
- c) any other businesses carried out by the applicant, or any associated persons of the applicant, that may compromise the applicant's independence from the proposed supervised entities; and
- d) any other relationships that the applicant has, or its directors or senior managers have, that have the potential to compromise the applicant's independence from the proposed supervised entities.

## ***FMA requirements***

58. The applicant must provide:

- a. details of business ownership, including the controlling owner (as defined in section 4 of the FSP (RDR) Act)
- b. details of any existing relationships the applicant, or their directors or senior managers, have with any of the proposed supervised businesses; whether the relationship is a result of personal relationships with staff at the supervised businesses, or due to other businesses carried out by the applicant
- c. details of any other businesses carried out by the applicant, or anyone associated with the applicant, that may compromise the applicant's independence from the proposed supervised businesses
- d. details of any other relationships that the applicant has, or its directors or senior managers have, that have the potential to compromise the applicant's independence from the proposed supervised businesses
- e. a description of the applicant's policies and procedures for managing conflicts of interest, or perceived conflicts of interest, with supervised businesses — this includes identifying who in the business has overall

responsibility for managing and reporting any events that compromise or may compromise the applicant's independence from the supervised interests

- f. policies and procedures, if any, concerning the rotation of key staff involved in carrying out the day-to-day responsibilities of the governing documents
- g. for each supervised interest, the length of time the applicant has been appointed as supervisor of that interest and who within the applicant's business has primary responsibility for that supervised interest, and the time they have spent in that role
- h. any other policies or processes to maintain the applicant's independence from the supervised businesses
- i. a summary of the applicant's policy on internal audits for maintaining independence.

59. We also expect the applicant to provide information on how the operational independence of the supervisor business is maintained.

## **Governance**

### **Relevant Act requirements**

16(3)(g)

Before making a decision FMA must assess the applicant's governance structure.

### **Relevant regulation requirements**

Reg 5(7)

FMA must, in assessing the matters referred to in section 16(3)(g), take into account:

- a) the balance of independent and executive directors on the applicant's board; and
- b) the nature, composition, powers, and functions of the applicant's board committees; and
- c) whether the applicant's constitution allows any director of the applicant to act otherwise than in the best interests of the applicant when exercising powers or performing duties as a director; and
- d) the applicant's succession plans, disaster recovery plans, and risk management policies; and
- e) whether the applicant has an internal auditor.

## **FMA requirements**

60. The applicant must, for its whole business and where its supervisor business has a separate governance structure, for that supervisor business:

- a. identify directors who are considered to be independent
- b. identify the executive directors on the applicant's board and note those who are resident in New Zealand
- c. provide the policy and procedures for determining board independence
- d. provide a summary of policies for a balanced board, and board member selection (this includes balancing independent and non-independent directors, and executive and non-executive directors)
- e. provide the policies and key controls for managing board conflict
- f. provide the policy for reviewing and assessing the board and individual board member's performance
- g. identify the nature, composition, powers, functions and structure of the board committees
- h. summarise the applicant's policy for engaging the external auditor and a brief description of business functions that are externally audited; and if external auditors are not engaged, provide the reasons
- i. describe the applicant's succession plans, disaster recovery plans and risk management policies
- j. provide an organisational chart to show where the trustee or the statutory supervisor business sits in the overall business
- k. describe how the supervisor business is kept separate and independent from the applicant's any other business.

## ***Professional indemnity insurance***

### **Relevant Act requirements**

16(3)(h)

Before making a decision FMA must assess the applicant's professional indemnity insurance.

### **Relevant regulation requirements**

Reg 5(8)

FMA must, in assessing the matters referred to in section 16(3)(h) of the Act, to the extent that the applicant is reasonably able to provide such information in accordance with the terms of the relevant insurance contract, take account of :

- a) the amount for which the applicant is insured, and how it compares to the applicant's overall risk of exposure to liability; and
- b) the coverage of the applicant's insurance policy and its exclusions; and
- c) how often the insurance is reviewed.

## **FMA requirements**

61. The applicant must provide:

- a. details of the how much coverage is provided by its professional indemnity insurance (and any exclusions), including the amount insured against the liability risks the applicant is exposed to
- b. details of any material conditions attached to insurance policies
- c. the policies in place for ongoing assessments of risk exposure
- d. details of who in the applicant's business is responsible for determining and approving the amount of insurance carried
- e. details of any insurance cover that has been declined, and if so why
- f. current certificates of insurance from the insurer.

## **Other matters**

### **Relevant Act requirements**

16(3)(i)

Before making a decision FMA must assess other prescribed matters relating to the applicant, debt securities, registered schemes or retirement villages covered by the licence, and issuers or operators covered by the licence.

16(3)(j)

Before making a decision FMA must assess any other matter that the FMA considers is material.

### **Relevant regulation requirements**

Reg 6

The matters that FMA must assess under section 16(3)(i) of the Act are as follows:

a) whether the applicant -

- (i) previously had, or currently has, a licence issued under section 16 of the Act or under the Financial Markets Conduct Act 2013 (FMC Act); or

(ii) has previously been, or is currently, an authorised body in respect of a licence issued under the FMC Act;

and

b) whether an associated person of the applicant :

(i) previously had, or currently has, a licence issued under section 16 of the Act or under the Financial Markets Conduct Act 2013 (FMC Act); or

(ii) has previously been, or is currently, an authorised body in respect of a licence issued under the FMC Act;

and

c) if paragraph (a) or (b) applies, the applicant's or associated person's record in respect of the licence, including any contravention of the conditions of the licence, licensee obligations, market services licensee obligations, or financial markets legislation; and

d) the applicant's due diligence processes when deciding whether to accept new appointments as a supervisor; and

e) whether the applicant proposes to delegate or delegates any of its functions to another entity and, if so, how the applicant will or does ensure that the function is effectively performed; and

f) whether the applicant or any relevant party has been the subject of a successful relevant proceeding or action.

## ***FMA requirements***

62. The applicant must provide:

- a. information on whether the applicant or an associated person has previously held a licence granted under the Act; a description of the applicant's (or associated person's) record for any licence and whether the applicant or associated person breached any of the licence's terms, or any applicable financial markets legislation
- b. a description of the policy and process for new mandates (including a summary of the due diligence framework)
- c. a description of how an appropriate risk management framework is used to help the supervisor of each supervised interest carry out its functions (for example, we would expect to be told how the applicant sets capital requirement or covenants for an issuer) and how the applicant ensures the framework is appropriate
- d. a summary of any delegated functions and how the applicant manages delegated functions
- e. details of any successful civil or criminal proceeding against the applicant and relevant parties; details of any regulatory or disciplinary action whether in New Zealand or overseas; details of the action's findings, when the matter occurred, and the outcome of the finding (ie, a fine, censure, warning, or a sentence of imprisonment).

63. The applicants must provide any other information required by us.

# Appendix 1: Financial Markets Supervisors Act 2011 and Financial Markets Supervisors Regulations 2014 - definitions and relevant sections

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Term	Definition
<b>Associated person</b>	<p>In these [the Regulations], a person (A) is <b>associated with or an associated person</b> of another person (B) if –</p> <ol style="list-style-type: none"><li>A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of the body corporate (or vice versa)</li><li>A and B are relatives or related bodies corporate</li><li>A and B are partners to whom the Partnership Act 1908 applies</li><li>A is a director or senior manager of B (or vice versa)</li><li>A and B are acting jointly or in concert</li><li>A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa)</li><li>A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa)</li><li>A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons</li><li>there is another person with whom A and B are both associated.</li></ol>
<b>Deed of supervision</b>	<p>Has the meaning given in section 5 of the Retirement Villages Act 2003 and includes every instrument that amends the deed of supervision.</p>
<b>Director</b>	<p>Has the meaning given in section 126 of the Companies Act 1993, but also includes, in the case of a body corporate that is not a company, a person (including a delegate) who occupies a position comparable with that of a director.</p>

Term	Definition
<b>Governing document</b>	<p>Means, as the context requires:</p> <ul style="list-style-type: none"> <li>a. a governing document within the meaning of section 6(1) of the Financial Markets Conduct Act 2013</li> <li>b. a deed of supervision</li> </ul>
<b>Issuer obligation</b>	<p>Means an obligation imposed on the issuer of a financial product by or under all of the following:</p> <ul style="list-style-type: none"> <li>a. the governing document that relates to the security</li> <li>b. the terms of any offer of the product</li> <li>c. a court order relating to the product</li> <li>d. the Financial Markets Supervisors Act 2011</li> <li>e. the Financial Markets Conduct Act 2013</li> <li>f. the KiwiSaver Act 2006</li> <li>g. the Non-bank Deposit Takers Act 2013</li> </ul>
<b>Licensee obligation</b>	<p>Means an obligation imposed on a licensee by or under any or all of the following:</p> <ul style="list-style-type: none"> <li>a. every governing document</li> <li>b. the terms of the offer of the financial product</li> <li>c. a court order relating to a supervised interest</li> <li>d. the Financial Markets Supervisors Act 2011</li> <li>e. the Financial Markets Conduct Act 2013</li> <li>f. the KiwiSaver Act 2006</li> <li>g. the Non-bank Deposit Takers Act 2013</li> <li>h. the Retirement Villages Act 2003</li> </ul>

Term	Definition
<b>Operator obligation</b>	<p>Means an obligation imposed on the operator by or under any or all of the following:</p> <ul style="list-style-type: none"> <li>a. every deed of supervision that relates to the retirement village</li> <li>b. a court order relating to the retirement village</li> <li>c. the Financial Markets Supervisors Act 2011</li> <li>d. the Retirement Villages Act 2003.</li> </ul>
<b>Relevant proceeding or action</b>	<p>In these regulations for a licence application or to vary a licence, it means; civil or criminal proceedings, regulatory action, or disciplinary action (whether in New Zealand or overseas), that the FMA considers relevant to the performance of the functions to which the licence relates or will relate to.</p>
<b>Section 3 purpose</b>	<p>The purpose of this Act is to protect the interests of product holders, and of residents of retirement villages, and to enhance investor confidence in financial markets and retirement villages, by —</p> <ul style="list-style-type: none"> <li>a. requiring persons who wish to be appointed as supervisors to be capable of effectively performing the functions of supervisors</li> <li>b. requiring supervisors to perform its functions effectively</li> <li>c. enabling supervisors to be held accountable for any failure to perform its functions effectively</li> </ul>
<b>Section 25 licensee must deliver regular reports to the FMA</b>	<ul style="list-style-type: none"> <li>1. A licensee must deliver a report to the FMA — <ul style="list-style-type: none"> <li>a. a date determined by the FMA when a licence is issued, which must be between 6 and 12 months after the date on which the licence is issued</li> <li>b. at least once every 6 months after that date</li> </ul> </li> <li>2. The report must contain — <ul style="list-style-type: none"> <li>a. prescribed information about the following: <ul style="list-style-type: none"> <li>i. the requirements referred to in section 16(2)</li> <li>ii. the matters referred to in section 16(3)</li> </ul> </li> </ul> </li> </ul>

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- iii. the licensee's compliance with any conditions imposed on the licence
  - iv. the supervised interest
  - v. v. the licensee's compliance with the terms of every governing document that relates to a supervised interest
  - vi. other prescribed matters; and
- b. any information required by a condition imposed on the licence.
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**Section 26 licensee must report breach of licensee obligation, etc**

1. This section applies if a licensee believes that —
  - a. the licensee has, or may have, breached a licensee obligation
  - b. a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the licensee
  - c. the information on which the FMA based the decision to issue or vary the licence was, or may have been, wrong, misleading, or incomplete.
2. For the purposes of subsection (1)(b) and (c), the licensee must consider any matters notified by the FMA under sections 18(3)(c) and 30(5)(d).
3. The licensee must, as soon as practicable after the licensee forms the belief referred to in subsection (1), deliver a report to the FMA containing details of the belief and the licensee's grounds for the belief.

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**Senior manager**

Means for an applicant, means a person (including a delegate) who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of the applicant (for example, a chief executive or a chief financial officer)

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## Appendix 2 – Revenue tables

### Concentration of revenue by individual supervised interest

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Percentage of total revenue <sup>10</sup>	Number of individual supervised interests that contribute annual revenue in this band
0-5%	
6-10%	
11-15%	
16-20%	
21-25%	
26-50%	
51-75%%	
76-100%	

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<sup>10</sup> Revenue here refers to revenue from the supervisor business, including revenue derived from the same supervised interest for other services provided by the applicant.

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