

JULY 2024

Consultation: Renewal of class exemptions for overseas custodians and overseas providers of custodial services – assurance engagements

About this consultation

The Financial Markets Authority – Te Mana Tātai Hokohoko is reviewing whether to renew two existing class exemptions for a further five years:

- The Financial Markets Conduct (Overseas Providers of Custodial Services – Assurance Engagement) Exemption Notice 2020 (Overseas Providers of Custodial Services – Assurance Engagement notice) – this provides exemptions for certain overseas providers of custodial services from getting an assurance engagement with a New Zealand auditor that complies with certain requirements in the Financial Markets Conduct Regulations 2014 (FMC Regulations). Assurance engagements can instead be obtained with licensed or registered auditors from Australia, Canada, France, Luxembourg, the United Kingdom, Netherlands, Switzerland or the United States of America for custodians based in those jurisdictions, and can comply with overseas requirements.
- The Financial Markets Conduct (Overseas Custodians of Scheme Property – Assurance Engagement) Exemption Notice 2022 (Overseas Custodians of Scheme Property – Assurance Engagement notice) – this exempts overseas custodians (of registered schemes) based in certain recognised jurisdictions from having to obtain an assurance engagement with a New Zealand auditor, and from an assurance engagement having to cover matters specified in the FMC Regulations. It allows use of licensed or registered auditors from Australia, Canada, France, Luxembourg, the United Kingdom, Netherlands, Switzerland or the United States of America for assurance engagements for custodians based in those jurisdictions.

We invite your feedback to support our review of these exemption notices. Please use the feedback form provided. Submissions close at 5pm on 27 August 2024.

Next steps

After considering submissions, we will finalise our policy proposals and aim to have any exemptions in place prior to the expiring of the existing notices. If you have any questions, please email questions@fma.govt.nz or call us on 0800 434 566.

This consultation is for overseas providers of custodial services and overseas custodians.

It seeks feedback on whether the current exemption notices providing relief from assurance engagement requirements of the FMC Act should be renewed, and, if so, what changes (if any) should be made.

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Review timing and process

We plan to complete our review of these two class exemptions and have any replacement notices in place before the existing notices expire in March 2026. However, the Overseas Providers of Custodial Services – Assurance Engagement notice covers periods that end on or after 15 March 2021 and before 14 March 2025; therefore a replacement notice would need to be in place before the expiry of that availability period. Similarly, the Overseas Custodians of Scheme Property – Assurance Engagement notice covers periods that end on or after 24 September 2022 and before 14 October 2025, so a replacement notice would need to be in place before the expiry of that period.

An indicative timetable is set out below. This is subject to change.

Date	Step
27 August 2024	Consultation period closes
September – November 2024	Decision made on whether to renew the exemption notices
November 2024 – February 2025	If we decide to renew the exemption notices, during this period we will draft replacement notices to give effect to the policy decisions
On or before 15 March 2025	Replacement Overseas Providers of Custodial Services – Assurance Engagement notice (if granted) comes into effect
On or before 14 October 2025	Replacement Overseas Custodians of Scheme Property – Assurance Engagement notice (if granted) comes into effect

FMA's power to grant class exemptions

We have powers to exempt persons from compliance with requirements in the FMC Act and associated regulations. Before we do so, we must be satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it. We must also be satisfied that the exemption is necessary or desirable to promote one or more of the following purposes of the FMC Act regime:

- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets
- to promote and facilitate the development of fair, efficient, and transparent financial markets
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services
- to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

We can only grant exemptions (including renewing existing exemptions) where we are satisfied that the statutory requirements are met. We need information from you to support our decision-making, so we encourage you to provide feedback.

Overseas providers of custodial services

Obligation to obtain assurance engagement

Regulation 229U of the FMC Regulations requires a custodian to obtain an assurance engagement from a New Zealand auditor in relation to its relevant custodial services. The resulting assurance report must cover the matters set out in regulation 229V of the FMC Regulations, namely that:

- the custodian's processes, procedures, and controls were suitably designed to meet the control objectives (as specified in the regulation) throughout the most recently completed relevant period; and
- the custodian's processes, procedures, and controls operated effectively throughout that relevant period.

Current exemption

The current exemption, the Overseas Providers of Custodial Services – Assurance Engagement notice, provides relief from regulation 229U of the FMC Regulations for certain overseas providers of custodial services if that provider instead obtains one or more overseas assurance engagements covering all of its custodial services, and of any sub-custodian, that are provided to the provider's clients in New Zealand. The provider must supply a copy of each of the resulting overseas assurance reports (and certain other specified information) to the FMA and, upon request, to its clients.

To qualify, the provider must have its principal place of business outside of New Zealand. It must also carry on business as a provider of a custodial service in one of the following jurisdictions:

- Canada
- Australia
- France
- Luxembourg
- Switzerland
- The Netherlands
- United Kingdom
- United States of America

The assurance engagement must be obtained in that jurisdiction with an auditor that is licensed or registered to provide assurance engagements in that jurisdiction. The assurance engagement must comply with the legal requirements, and auditing and assurance standards in that jurisdiction, and must include the auditor's assessment of the provider's processes, procedures, and controls relating to the custody of property, including the suitability of their design and their operating effectiveness.

The Overseas Providers of Custodial Services – Assurance Engagement notice covers periods that end on or after 15 March 2021 and before 14 March 2025. Effectively the exemption applies to relevant periods (as

defined in the FMC Regulations) that end on or after the commencement date of the notice and before the day that is the revocation date less one year. This leaves time after the end of the final relevant period covered by the notice and before the revocation date for the conditions described above to be complied with. It allows some time for a client to request a copy of any relevant assurance report for that final period before the notice expires.

Policy rationale

The policy rationale for the existing exemption was that the exemptions only apply where assurance engagements are prepared by overseas auditors who are subject to auditing standards and oversight that are broadly equivalent to those in New Zealand. This means we can have confidence in the comparability and quality of their assurance engagements. Where an overseas custodian has already obtained an assurance engagement prepared by an overseas auditor subject to auditing standards and oversight that are broadly equivalent to those that exist in New Zealand, the compliance costs of having an additional assurance engagement undertaken by a New Zealand qualified auditor would outweigh the benefits to investors.

Consultation questions: Overseas Providers of Custodial Services – Assurance Engagement notice

Q1	Are you (or your clients or custodians) currently relying on the Overseas Providers of Custodial Services – Assurance Engagement Exemption notice? If you are an overseas provider of custodial services but are not likely to rely on this exemption, please explain why not.
Q2	Does the notice allow you to avoid unnecessary compliance costs? Please explain (and, if possible, quantify) the compliance costs you would face if this exemption was not in place.
Q3	Does the policy rationale behind the notice remain relevant and valid? Please explain your view.
Q4	Please let us know if you believe any further jurisdictions should be included, giving your reasons, showing appropriate demand exists and explaining in detail how the relevant auditing standards and oversight of auditors are broadly equivalent to those in New Zealand.
Q5	Do you think any amendments are needed to the notice if it is renewed? If so, please specify the amendments you propose, the reasons for these, and the impact of the amendments on providers, clients and the market.

Overseas custodians

Obligation to obtain assurance engagement

Regulations 87(1) to (2) of the FMC Regulations require a custodian for a registered scheme to obtain an assurance engagement from a New Zealand auditor. The assurance engagement must 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 (as specified in regulation 88 of the FMC Regulations) throughout the most recently completed relevant period; and
- the custodian's processes, procedures, and controls operated effectively throughout that relevant period.

Current exemption

The current exemption, the Overseas Custodians of Scheme Property – Assurance Engagement notice, provides relief from regulations 87(1) to (2) of the FMC Regulations for certain overseas custodians if that custodian instead obtains one or more overseas assurance engagements covering all New Zealand scheme property held by the custodian. The custodian must supply a copy of each of the resulting overseas assurance reports (and certain other specified information) to the relevant persons (as defined in the FMC Regulations).

To qualify, the custodian must have its principal place of business outside of New Zealand. It must also carry on business as a custodian in one of the following jurisdictions:

- Canada
- Australia
- France
- Luxembourg
- Switzerland
- The Netherlands
- United Kingdom
- United States of America

The assurance engagement must be obtained in that same jurisdiction with an auditor that is licensed or registered to provide assurance engagements in that jurisdiction. The assurance engagement must comply with the legal requirements, and auditing and assurance standards in that jurisdiction, and must include the auditor's assessment of the custodian's processes, procedures, and controls relating to the custody of property, including the suitability of their design and their operating effectiveness.

The Overseas Custodians of Scheme Property – Assurance Engagement notice covers periods that end on or after 24 September 2022 and before 14 October 2025. Effectively the exemption applies to relevant periods (as defined in the FMC Regulations) that end on or after the commencement date of the notice and before the day that is the revocation date less five months. This leaves time after the end of the final relevant period covered by the notice and before the revocation date for the conditions described above to be complied with.

Policy rationale

The policy rationale for the existing exemption notice was that the exemptions only apply where assurance engagements are prepared by overseas auditors who are subject to auditing standards and oversight that are broadly equivalent to those in New Zealand. This means we can have confidence in the comparability and quality of their assurance engagements. Where an overseas custodian has already obtained an assurance engagement prepared by an overseas auditor subject to auditing standards and oversight that are broadly equivalent to those that exist in New Zealand, the compliance costs of having an additional assurance engagement undertaken by a New Zealand qualified auditor would outweigh the benefits to investors.

Consultation questions: Overseas Custodians of Scheme Property – Assurance Engagement notice

Q6	Are you (or your clients or custodians) currently relying on the Overseas Custodians of Scheme Property – Assurance Engagement Exemption notice? If you are an overseas custodian but are not likely to rely on this exemption, please explain why not.
Q7	Does the notice allow you to avoid unnecessary compliance costs? Please explain (and, if possible, quantify) the compliance costs you would face if this exemption was not in place.
Q8	Does the policy rationale behind the notice remain relevant and valid? Please explain your view.
Q9	Please let us know if you believe any further jurisdictions should be included, giving your reasons, showing appropriate demand exists and explaining in detail how the relevant auditing standards and oversight of auditors are broadly equivalent to those in New Zealand.
Q10	Do you think any amendments are needed to the notice if it is renewed? If so, please specify the amendments you propose, the reasons for these, and the impact of the amendments on providers, clients and the market.

