

# Related-party transactions under the Financial Markets Conduct Act 2013

This information sheet outlines the rules on related-party transactions that apply to managed investment schemes under the Financial Markets Conduct Act 2013 (FMC Act).

## A general prohibition on related-party transactions under the FMC Act

There is a general prohibition against the manager of a registered managed investment scheme entering into a transaction that provides for a related party benefit to be given. This prohibition extends to any investment manager, administration manager, or other person to whom the manager has contracted some or all of their functions to.

However, there are a number of exceptions to this.

The following is a summary of the relevant provisions in the FMC Act and the Financial Markets Conduct Regulations 2014 (i.e. sections 172 to 177 of the Act and clauses 100 to 106 of the Regulations). We encourage you to seek legal advice to ensure your scheme complies with the rules on related-party transactions.

### Meaning of related-party benefit and related party

A related-party benefit is a benefit that is either given out of scheme property, or creates an exposure to loss for scheme property, and is given to, or received by a related party of the scheme. This does not include fees or expenses paid or reimbursed to the manager in accordance with the FMC Act, or the governing document of the scheme.

The following are related parties of a managed investment scheme:

- the manager of the scheme or any trustee of a restricted scheme
- any investment manager, administration manager, or other person to whom the manager has contracted some or all of their functions as manager
- in the case of a restricted scheme designated as an employer-related scheme on the register of managed investment schemes, any contributor to the scheme who is not a scheme participant (other than the Crown).
- an associated person of any of the above (noting that the 'associated person' test is set out in section 12 of the FMC Act)

## Permitted related-party benefits

The FMC Act permits related-party benefits to be given in a number of circumstances.

### Non-restricted schemes

A related-party benefit may be given where the manager notifies the supervisor of the transaction (or transactions), advises the supervisor of the related-party benefits being given, and sets out the key terms of the transaction. If this is done, then the manager may either obtain the supervisor's consent to the transaction, or the manager may certify that section 174



(permitted related-party benefits – see below) applies to the transaction if that is the case. The supervisor must not consent to a transaction unless one of the following applies and the supervisor certifies this:

- the supervisor considers the transaction is in the best interests of scheme participants, or
- the transaction is approved by or contingent on approval by a special resolution of the class of scheme participants affected, or potentially affected, by the transaction.

### Restricted schemes

For a restricted scheme a related party benefit transaction may be entered into if the manager (being the trustees of the restricted scheme acting together) certifies that:

- the transaction is in the best interests of scheme participants, or
- the section 174 applies to the transaction or all related-party benefits to be given, or
- the transaction is approved by or contingent on approval by a special resolution of the class of scheme participants affected, or potentially affected, by the transaction.

The manager of a restricted scheme cannot make any of these certifications unless the licensed independent trustee has consented to that certification.

### Requirements for certificates for related-party benefits (section 175 of the FMC Act and clause 105 of the Regulations)

The certificates from the manager or supervisor are effective only if they:

- state the specific grounds on which they are given, and the basis for relying on those grounds, together with supporting evidence, and
- state the nature and value or extent of the benefit, together with supporting evidence.

### Reporting to the supervisor or FMA (clause 100 of the Regulations)

A manager must provide a quarterly report to the supervisor (or in the case of a restricted scheme, to the FMA) which discloses if any certificates have been given in the previous quarter under sections 173(2)(b) of the FMC Act (in the case of a non-restricted scheme) or section 173(4) (in the case of a restricted scheme), and, if so, include a copy of those certificates.

### Permitted related party benefits under section 174

Section 174 provides that certain types of related-party benefits are permitted.

#### *Arm's length terms*

An arm's length related-party benefit transaction is permitted if the arm's length transaction is given on terms that:

- would be reasonable in the circumstances if the parties were connected or related only by the transaction, and each party was acting in its own best interests, or
- are less favourable to the related party than the terms set out in the above bullet point.

#### *Investment in other registered schemes*

An investment in another registered scheme is permitted.

#### *Certain registered bank investments*

Investments made in the ordinary course of business in certain types of registered bank investments are permitted. The types of investments are category 2 products issued by a registered bank, debt securities issued by a registered bank, and other category 2 products such as PIE cash and term funds.



### *Other prescribed permitted related-party benefits or transactions*

The FMC Regulations 2014 prescribe the following permitted related-party benefits or transactions:

- investments in Australian-registered managed investment scheme (see clause 101 of the Regulations)
- investments in government securities (see clause 102 of the Regulations)
- a transaction to acquire first property (see clause 103 of the Regulations)
- the scheme is listed and the transaction is governed by the listing rules of the relevant market which contain related-party provisions (see clause 104 of the Regulations).

## **Additional restrictions for restricted schemes (in-house assets restriction)**

The manager of a restricted scheme (or any person to whom the manager has contracted some or all of its functions as manager) must not acquire an in-house asset if, as a result of the acquisition, the restricted scheme would reach, or increase to, an in-house asset ratio of 5 per cent or more in relation to any related party or scheme participant (A).

The in-house asset ratio in relation to A is calculated as a ratio which is expressed as a percentage of paragraph (a) to paragraph (b)

- (a) being the sum of the net asset values of:
  - (i) the in-house assets of A; and
  - (ii) the in-house assets of any other related parties of the scheme or scheme participants that are associated with A; and
- (b) the net asset value of the scheme property.

There are a number of definitions specific to the additional restrictions for restricted schemes set out in section 176 of the FMC Act.

In particular, 'in-house asset:'

- (a) means, in relation to a related party or scheme participant (A), an asset of the scheme that is a loan to, or an investment in, A (or an associate of A) or an asset of the scheme that is subject to a lease or lease arrangement with A (or an associate of A); but
- (b) excludes investments referred to in section 174(b) or (c) (being investments in another registered scheme or certain registered bank investments).

Managers of restricted schemes have until 30 November 2017 to ensure that scheme does not have an in-house ratio of 5 per cent or more in relation to any related party or scheme participant (see clause 39 of schedule 4 of the FMC Act).

## **Start planning now**

We encourage you to plan and be ready for the new regime. Plan what you need to do to ensure you can properly meet your duties and responsibilities in respect of related-party transactions.

## **Where can I find more information?**

For more general information about the FMC Act, visit the Future of Financial Markets section of our website – [www.fma.govt.nz](http://www.fma.govt.nz). You can also subscribe to receive FMA Updates for the latest news.