



JULY 2024

Regulatory Impact Statement:

Exemption for overseas banks and insurers from requirement for two directors to sign climate statements

This document is for overseas banks and insurers with branch operations in New Zealand that are climate reporting entities, their advisers, primary users of climate statements, and other interested parties. It discusses exemption relief from the requirement to have two directors sign climate statements.

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Executive summary

This Regulatory Impact Statement (RIS) discusses an exemption for overseas banks and insurers in respect of New Zealand's new climate-related disclosures (CRD) regime.

Overseas banks and insurers with branch operations in New Zealand make up a small subset of the approximately 175 entities that are classified as [climate reporting entities](#) (CREs) under the CRD regime.

CREs are required to produce annual climate statements covering their governance arrangements, risk management, strategies, and metrics and targets for mitigating and adapting to climate-related risks, opportunities and impacts. Without an exemption, each of these overseas CREs will need to ensure that two directors sign their climate statements to comply with the regime.

Climate statements are linked to financial statements. Since 2016 the Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) has granted exemption relief for the director signing requirements that apply to these entities' financial statements¹.

We believe an exemption from climate statement signing requirements will help 'right-size' the compliance obligations for overseas banks and insurers – while at the same time ensuring climate-related information is available to New Zealand investors to support good decision-making.

This RIS summarises the problem we are seeking to address, our objectives, the options and their associated impacts, and the consultation process we undertook before deciding to grant the exemption. Our analysis of whether to grant the exemption was based on the statutory test that applies to use of the FMA's exemption powers. We must be satisfied that the exemption would promote one or more of the purposes of the Financial Markets Conduct Act 2013 (FMC Act). We must also be satisfied that the extent of the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.

Exemption granted

After careful consideration of both regulatory and non-regulatory impacts, we have decided to grant class exemption relief for overseas banks and insurers. The relief comprises an exemption for overseas registered banks and overseas licensed insurers that are climate reporting entities under Part 7A of the FMC Act. Those entities are exempted from the requirement to have their climate statements, or group climate statements, dated and signed by their directors.

The exemption relief will be subject to conditions outlined in the Schedule to this RIS. The main condition is the climate statements or group climate statements must be dated and signed by the exempt entity's New Zealand chief executive officer.

¹ [Financial Markets Conduct \(Overseas Registered Banks and Licensed Insurers\) Exemption Notice 2021](#) (the 'OBI Notice') is the current notice replacing the [Financial Markets Conduct \(Overseas Registered Banks and Licensed Insurers\) Exemption Notice 2016](#)

Background and issue

The CRD regime and its purposes

In October 2021 the Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act (CRD Act) was enacted. The CRD Act amended the FMC Act by including a new Part 7A entitled “Climate-related disclosures for certain FMC reporting entities with higher level of public accountability”. The purpose of these disclosures is to:

- encourage entities to routinely consider the short-, medium-, and long-term risks and opportunities that climate change presents for the activities of the entity or the entity’s group; and
- enable entities to show how they are considering those risks and opportunities; and
- enable investors and other stakeholders to assess the merits of how entities are considering those risks and opportunities.

The ultimate aim of these disclosures is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future.

Part 7A applies to entities called climate reporting entities (CREs), comprising:

- large listed issuers of quoted equity securities or quoted debt securities (large means over \$60 million in market capitalisation or quoted debt, respectively. Issuers listed on growth markets are excluded)
- registered banks, credit unions and building societies with total assets over \$1 billion
- licensed insurers with total assets over \$1 billion or annual gross premium revenue over \$250m
- managers of registered schemes, such as KiwiSaver schemes and investment funds (other than restricted schemes) with greater than \$1 billion in total assets under management.

There are three sets of duties under Part 7A. These duties relate to—

- a) keeping proper records relating to CREs’ responsibility to make climate-related disclosures
- b) preparing climate statements
- c) lodging those statements with the Companies Office, so they are publicly available.

Climate statements are required to be lodged from early 2024 for accounting periods that start on or after 1 January 2023. From October 2024 there will be a further set of duties in Part 7A regarding assurance of greenhouse gas emissions disclosures in climate statements.

Climate statements for overseas banks and insurers

The main provision that is relevant to the issue addressed in this RIS is section 461ZB(2) in Part 7A of the FMC Act, which states:

“The climate reporting entity must ensure that, within 4 months after the balance date of the entity, climate statements that comply with the climate-related disclosure framework are—

(a) prepared for its New Zealand business as if that business were conducted by a company formed and registered in New Zealand; and

(b) dated and signed on behalf of the entity by 2 directors of the entity or, if the entity has only 1 director, by that director.” [*emphasis added*]

It is not clear from the legislative history or the policy development process why the climate statements are required to be signed by two directors. It appears this aspect has been copied from the financial reporting provisions in Part 7 of the FMC Act.

It appears the main purpose of having two directors sign the climate statements is to show that proper processes have been followed to produce and approve the climate statements for filing on the register at the Companies Office.

Statement of the problem

Some overseas banks and insurers have told us the director signing requirements in section 461ZB of the FMC Act are cumbersome and inefficient. They have also noted overseas banks and insurers do not have similar execution requirements in their international environment.

They note the nature of each of their branch structures is such that each entity’s board supervises multiple countries’ branches, and for good governance would ordinarily devolve responsibility for execution of documents similar to climate statements to local senior management, who are more familiar with the nuances of the local requirements and the relevant documents’ content. They say local senior management are in a much better position to monitor and confirm compliance with the New Zealand legal requirements and ensure the accuracy of the relevant documents.

They also noted an exemption would not affect all other applicable responsibilities under Part 7A of the FMC Act, including the obligations to prepare climate statements and group climate statements in accordance with the Aotearoa New Zealand Climate Standards and to lodge them, nor would it alter the entities’ and their directors’ potential liability settings for any climate statement breaches.

Size of the problem

We carried out a targeted consultation and some direct engagement to check which overseas climate reporting entities may need relief. We found:

- 6 of 11 overseas banks would like relief
- 1 out of 4 overseas insurers would like relief
- 2 out of 4 overseas insurers are interested in utilising the relief in the future.

We also considered other types of overseas climate reporting entities and whether they need relief:

- Foreign listed issuers – there is no significant need or demand for exemption relief. There is currently one foreign listed issuer that is also an overseas bank with a branch business in New Zealand. This

entity has requested clarity that if exemption relief is granted, it will include listed issuers that are overseas banks within the ambit of the exemption. We have agreed to this request.

- Overseas fund managers – none operating in New Zealand that are climate reporting entities.
- Overseas building societies or credit unions – none operating in New Zealand.

Existing class exemption for overseas banks and insurers

The FMA has already granted an exemption exempting overseas registered banks and licensed insurers from the signing and dating requirements for financial statements under sections 460 and 461 of the FMC Act (the OBI Notice).

This exemption relief was originally granted in 2016 and then renewed in 2021. The policy rationale given in 2016 was that in certain jurisdictions directors do not sign financial statements; it is logistically challenging to get overseas directors to sign financial statements specifically for New Zealand purposes, particularly with the FMC Act timeframes; and relief should be conditional on the financial statements being signed in accordance with the requirements of the home jurisdiction.

While there are links between financial reporting and climate reporting, it is not correct to say the requested exemption for climate statements is similar to the OBI Notice. There are the following differences:

- under the OBI Notice the overseas financial statements are required to be signed in the manner required by the home jurisdiction
- overseas signing requirements for climate statements have not yet been established in many jurisdictions, given that New Zealand is one of the world leaders in this area
- financial reporting is required in respect of both the group and the New Zealand branch, but climate reporting is only required in respect of the New Zealand branch and any New Zealand subsidiaries.

Compliance burden and its consequences

From our targeted consultation we have heard:

- getting the two overseas directors' signatures would require co-ordination with the directors' busy schedules and take many hours to provide sufficiently detailed explanations to the degree required to sign the climate statements
- additional advice and education will be needed to brief the directors, walk them through all the detail of the legislation and local compliance requirements, and explain why their signatures are required
- in terms of cost, one overseas bank has estimated that the total internal and external costs for obtaining the signature of two directors on the climate statements, and providing associated advice, would be approximately NZ\$55,000 + GST.

We are concerned the compliance costs would be disproportionate to the purpose of having two directors sign and date the climate statements. One of the purposes is to show that proper processes have been followed to produce and approve the statements for lodgement, but this can be evidenced in other ways.

Objectives

In some instances where market participants encounter difficulties complying with the standard FMC Act regime, exemption relief from a regulatory or disclosure requirement may be appropriate. Any exemptions we grant must promote one or more of the purposes of the FMC Act. Additionally, the extent of the exemption must not be broader than reasonably necessary to address the matters that gave rise to the exemption.

In considering the use of the FMA's exemption powers, we assessed the options against the following objectives, which we consider are the most relevant purposes of the FMC Act for this matter:

- to promote and facilitate the development of fair, efficient, and transparent financial markets
- to promote the confident and informed participation of businesses, investors, and consumers in the 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 promote innovation and flexibility in the financial markets
- to avoid unnecessary compliance costs.

When assessing the possible options against these objectives, we considered the interests of all relevant stakeholders including:

- primary users of climate statements
- overseas banks and insurers.

Options and impact analysis

We considered two options in relation to the problem identified:

- Option 1 (selected): Grant exemption relief
- Option 2 (not selected): No exemption (status quo)

Option 1: Grant exemption relief

Description

Grant class exemption relief for overseas banks and insurers. The relief will comprise an exemption for overseas registered banks and overseas licensed insurers that are climate reporting entities under Part 7A of the FMC Act. Those entities will be exempted from the requirement to have their climate statements, or group climate statements, dated and signed by two directors.

The exemption relief will be subject to conditions. The main condition is the climate statements or group climate statements must be dated and signed by the exempt entity's New Zealand chief executive officer.

Impact analysis

Promotes innovation and flexibility in the financial markets

Providing relief from director signing requirements promotes flexibility by ensuring the obligations suit the relevant circumstances, i.e. having the New Zealand chief executive officer sign the climate statements will still demonstrate that appropriate corporate governance processes have been followed. Flexibility is particularly important for overseas banks, which have numerous branch operations throughout the world.

Avoids unnecessary compliance costs

We consider the compliance costs for obtaining director signatures are unnecessary: the reason for director signing is to show that the climate statements have been properly approved, and we have a condition covering this which requires a confirmation that appropriate corporate governance processes have been followed.

Option 2: No exemptions (status quo)

Description

We would not grant the exemptions for overseas banks and insurers.

If no class exemption is granted, full Part 7A director signing obligations will continue to apply for overseas banks and insurers.

Impact analysis

Promotes innovation and flexibility in the financial markets

Requiring directors of overseas banks and insurers to sign climate statements will not promote flexibility in financial markets.

Avoids unnecessary compliance costs

There are likely to be significant compliance costs for affected overseas banks and insurers. These costs will be unnecessary for the reasons already discussed, and compliance will add little or no value compared to the alternative set out in the exemption notice.

Summary assessment of options against objectives

KEY: ✓✓ Meets the policy objectives ✓ Partially meets the policy objectives ✗ Does not meet the policy objectives

FMC Act objective	Option 1: Exemption relief	Option 2: No exemption (status quo)
To avoid unnecessary compliance costs	Allowing the NZ CEO instead of overseas directors to sign the climate statements will avoid unnecessary compliance costs for affected entities. ✓✓	There are likely to be significant compliance costs for affected overseas banks and insurers if they are required to arrange for directors to sign climate statements, without any real benefit for primary users of climate reports. ✗
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	Not relevant	Not relevant
To promote innovation and flexibility in the financial markets	Allowing the option of the NZ CEO (instead of overseas directors) signing the climate statements, where appropriate protections are put in place, will promote flexibility. ✓✓	This option will not promote flexibility in the financial markets – no matter what the circumstances, overseas directors will be required to sign climate statements. ✗
Not be broader than reasonably necessary	Given the exemption will only apply to a small subset of CREs and relief is limited to 2.5 years to enable a full review to take place, the proposed exemption is not broader than reasonably necessary. ✓✓	Not relevant

FMC Act objective	Option 1: Exemption relief	Option 2: No exemption (status quo)
Promote the confident and informed participation of businesses, investors, and consumers in the financial markets	Not relevant	Not relevant
Promote and facilitate the development of fair, efficient, and transparent financial markets	Not relevant	Not relevant

Consultation

Consultation approach

Initial consultation

We conducted a targeted consultation in December 2023. The consultation targeted key external stakeholders. Feedback was received from the XRB (the External Reporting Board, New Zealand's standards setter for accounting, audit and climate reporting standards), the Reserve Bank of New Zealand, the NZ Shareholders' Association, the NZ Law Society, a climate action group, four overseas insurers, and the NZ Banking Association, which represents 11 overseas banks with branch operations in New Zealand.

All submitters generally agreed with the core problem that the signing requirements under Part 7A of the FMC Act for climate statements impose unnecessary compliance costs on overseas banks and insurers. There was unanimous support for some form of exemption relief.

There were mixed views on the design of the relief. Some submitters favoured an approach, based on some provisions in the Banking (Prudential Supervision) Act 1989 (BPS Act) about signing of bank disclosure documents, where all directors have to sign the climate statements but can appoint an agent to do so (the BPS Act model). Others favoured a proposal where the New Zealand chief executive officer signs instead of two directors (the CEO model).

We consider the CEO model is better for the following reasons:

- the BPS Act model is not applicable to insurers, so that model would not align with current legislative settings insurers are subject to
- the BPS Act model is not a proportionate response to the problem, especially requiring all directors to sign, instead of the two directors required under Part 7A of the FMC Act
- the CEO model is more likely to align with international signing requirements
- the CEO model does not directly impact on director liability
- the CEO model, with a condition that the CEO confirms publicly that the climate statements have been approved for lodgement in accordance with the corporate governance policies of the exempt entity, demonstrates that appropriate corporate governance processes have been followed.

There were also different views on how long the exemption relief should last for. Some submitters favoured five years. Others favoured a shorter period.

We consider the exemption should be for a limited period of time, to allow a full review of the method of execution of financial statements and climate statements prior to the expiry of the OBI Notice in November 2026. This will enable us to:

- monitor developments in international practices around execution of climate statements

- consider, with developments in technology since 2016, whether it is still logistically challenging to get overseas directors to sign financial and climate statements specifically for New Zealand purposes within the FMC Act timeframes
- assess the quality of disclosures in the initial climate statements about the governance processes used for climate reporting
- consider whether the requirement for assurance over GHG emission disclosures in climate statements, for accounting periods ending on or after 27 October 2024, will impact on director involvement in the signing of climate statements. For example, if some overseas entities that rely on the exemption will be required by their auditors to provide a letter of representation signed by two directors before the auditors approve the climate statements, then it will be difficult to justify an ongoing class exemption for these entities.

Further consultation

We carried out a further targeted consultation on an exposure draft of the notice to check the drafting and practical workability of the wording.

The main point various stakeholders raised was the wording did not seem to allow overseas entities that are also overseas listed issuers to get the benefit of the exemption. We agree that if the overseas bank (or licensed insurer) is also a listed issuer then it makes sense that it still gets the intended benefit of the class exemption – especially if it plans to produce 1 set of climate statements, which we understand will normally be the case. We asked the Parliamentary Counsel Office to adjust the notice. This has resulted in a change to the definition of ‘exempt entity’ in clause 5(1), and to the scope of the exemption in clause 6.

One stakeholder requested the exemption should apply in respect of any accounting period that has commenced before the expiry date of the exemption notice, 3 November 2026. We declined this request. We are going to review the notice before it expires in 2026 and determine what the relief should be going forward for any accounting period that has commenced before the expiry date of the exemption notice, and subsequent accounting periods.

A stakeholder also requested the exemption apply in respect of climate-related disclosures for accounting periods that have been completed prior to expiry of the exemption notice, even if the due date for lodgement of those climate-related disclosures occurs after the exemption has expired. We declined this request. In this situation an exemption notice cannot continue to apply after it has expired.

Finally, one stakeholder raised a policy point (that we had already considered during the earlier targeted consultation process) around who can sign the climate statements in place of the directors. They asked if the signatory could also be the NZ chief financial officer, as an alternative to the NZ CEO. We decided that the appropriate person to sign climate statements in place of the directors is the NZ CEO. The exemption notice uses the same definitions that are in the banking and insurance prudential supervision legislation. For an overseas bank the NZ CEO is the most senior officer of that bank who is ordinarily resident in New Zealand; or another person who may be nominated by that bank and agreed to in writing by the Reserve Bank. For an overseas insurer the NZ CEO is “a person occupying the position of chief executive officer by whatever name called”.

Conclusion and selected option

Having carefully considered regulatory and non-regulatory impacts, and feedback provided through consultation, we decided that Option 1 (grant exemption relief) addresses the identified problems and will achieve the objectives of:

- promoting innovation and flexibility in the financial markets
- avoiding unnecessary compliance costs.

Option 2 (no exemption) would not achieve these objectives.

On this basis we have decided to grant an exemption for overseas banks and insurers from the director signing duties in Part 7A of the FMC Act. We think the exemption will 'right-size' the compliance obligations for these entities. The exemption will be granted subject to conditions that will seek to ensure the appropriate governance processes are followed. We think that any detrimental impact of the exemption relief on the overall purposes of the CRD regime is manageable, especially through the conditions we will impose on the exemption relief and our monitoring of the governance disclosures that exempt entities will make in their climate statements.

Schedule – Exemption requirements and conditions

Overseas banks and insurers

The exemption will be available if all of the following apply:

- the CRE is an overseas person; and
- the CRE is either or both of the following:
 - a) a climate reporting entity under section 461O(1)(b) or (c) of the Act (which relate to large registered banks and licensed insurers):
 - b) a climate reporting entity under section 461O(1)(a) of the Act (which relates to large listed issuers) that is a registered bank or a licensed insurer.

The exemption will allow such entities to dispense with having their climate statements, or group climate statements, signed by 2 directors.

The exemption will be subject to the following conditions:

The CRE must:

- ensure that any climate statements, or group climate statements, delivered for lodgement on the Companies Office register of climate statements are dated and signed on behalf of the entity by its New Zealand chief executive officer
- file a notice annually on the register containing:
 - a statement that it has elected to rely on the exemption
 - a brief summary of the effect of relying on the exemption
 - the name of the exempt entity's New Zealand chief executive officer
 - a statement confirming the climate statements or group climate statements have been approved for lodgement in accordance with the corporate governance policies of the exempt entity.

The exemption will expire on 3 November 2026.

