

# Standard Conditions for **financial institution** licences

If we grant you a financial institution licence, the licence will be subject to conditions. See section 402 of the Financial Markets Conduct Act 2013 (**FMC Act**).

Conditions will include:

- a condition that the licensee or authorised body may, under the licence, only provide the market services or class of market services to which the licence relates and for which each person is authorised under the licence (see section 402(1)(a) of the FMC Act)
- conditions imposed by the FMA under section 403 of the FMC Act – these will generally include:
  - the standard conditions (see **part A** below); and
  - any specific conditions (see **part B** below)
- any conditions imposed by regulations (see part C below). As at November 2022 the relevant regulations are the Financial Markets Conduct Regulations 2014 (the **FMC Regulations**).

The standard conditions apply in respect of the market service of acting as a financial institution (the “**financial institution service**”). We will consult with industry prior to changing the standard conditions in Part A.

## A. Standard conditions

Where we refer to standard conditions for financial institution licences, this means the following conditions which will be effective on and from the day Part 1 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 comes into force:

### 1. Ongoing requirements

**Condition:** You must at all times continue to satisfy the requirements set out in section 396 and, if applicable, section 400 of the FMC Act.

**Explanatory note:** Sections 396 and 400 of the FMC Act specify the requirements in respect of which the FMA must be satisfied in order to grant a licence, or authorise a related body corporate as an authorised body. For example, the FMA must be satisfied that:

- any prescribed criteria are met
- your directors and senior managers are fit and proper persons
- you are capable of effectively performing the service
- there is no reason to believe you are likely to contravene your obligations
- you are registered on the Financial Service Providers Register.

The requirements under section 400 include that, if you have authorised bodies on your licence, you, as the licence holder, must continue to have arrangements in place to ensure you will maintain appropriate control or supervision over the provision of the financial institution services provided by those authorised bodies.

This condition confirms that the licensing requirements must continue to be satisfied at all times while you hold the licence, not just at the time the licence is issued. Given that there is no expiry date for your licence, it is critical that the requirements continue to be satisfied at all times. This condition does not prevent you from making changes to your business or the scope of your financial institution service, provided you can continue to meet the requirements.

You will need to ensure you keep your policies, processes, systems and controls (including those that form your fair conduct programme), up to date, and that they take into account any changes you may make to your business or service arrangements. Where you make changes to your business or service arrangements, you will need to ensure that they support, and do not hinder, the fair treatment of consumers and compliance with your fair conduct programme.

You will also need to ensure that your directors and senior managers, and any other relevant parties, are and remain fit and proper persons to hold their respective positions.

For further information in relation to licensing requirements see the Financial Institution Licence Application Guide.

## 2. Notification of material changes

**Condition:** You must notify us in writing within 10 working days of implementing any material change to the nature of your financial institution service.

**Explanatory note:** Sections 410 to 412 of the FMC Act and regulation 191 of the FMC Regulations require certain matters to be notified to us. This applies to all FMC Act licences.

This standard condition is in addition to those statutory notification obligations. It applies where you materially change the nature of your financial institution service.

The purpose of this standard condition is to ensure that we are informed of any material changes that you make to your business, whether or not they may have an adverse effect on your ability to provide your financial institution service and whether or not they relate to the requirements for issue of a licence being satisfied.

By *nature of your financial institution service*, we mean whether you are a registered bank, a licensed insurer or a licensed non-bank deposit taker, and whether you are in the business of providing one or more relevant services to consumers. An example of a material change in this context would be changing the form of your business from a licensed non-bank deposit taker to a registered bank. Other examples of material changes in this context would be ceasing to be in the business of providing any relevant services to consumers, or an insurer moving its entire business into run-off.

You are not required to notify us if you change the relevant services and associated products you provide to consumers or if you change the methods by which your relevant services and associated products are provided to consumers (distribution methods), except in the situation where the change results in a material change to the nature of your financial institution service, as described above. You may be requested to provide us with information regarding these changes in regulatory returns (refer to standard condition 3).

### 3. Regulatory returns

**Condition:** You must provide us with the information we need to monitor your ongoing capability to effectively perform the financial institution service in accordance with the applicable eligibility criteria and other requirements in the FMC Act. This will include updated information on your fair conduct programme and the nature, size and complexity of your financial institution service.

Information must be provided in accordance with the requirements issued by the FMA, following prior consultation with industry.

**Explanatory note:** In future, you will be asked to provide information to the FMA on a periodic or ongoing basis, or on request, in accordance with the requirements issued under this condition. These requirements may be set out in a Regulatory Return Framework and Methodology.

Under section 412 of the FMC Act you have obligations to report various matters to the FMA as soon as practicable, including any material change of circumstances. This standard condition is in addition to those reporting obligations in the FMC Act and any other reporting obligations that may be imposed in regulations.

The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. The regulatory returns are likely to require reporting of factual business information, such as relevant services and associated products provided to consumers, numbers of consumers, numbers and types of breaches, and complaints information. You will also be asked for information about the implementation and maintenance of, and compliance with, your fair conduct programme.

The FMA will consult with industry prior to publication of the requirements for regulatory returns, including any Regulatory Return Framework and Methodology, that will form part of the standard conditions.

## 4. Outsourcing

**Condition:** If you outsource a system or process necessary to the provision of your financial institution service you must be satisfied that the provider is capable of performing the service to the standard required to enable you to meet your market services licensee obligations.

**Explanatory note:** This condition requires you to be satisfied regarding the capability of your outsource providers. This is intended to ensure that consumers are treated fairly, even when you outsource a system or process necessary to the provision of your financial institution service.

This condition only covers those outsource arrangements where you rely on the outsource provider to meet your market services licensee obligations as they relate to your financial institution service (licensee obligations).

Important matters that you should consider when conducting due diligence on a proposed outsource provider include:

- the outsource provider's previous experience
- public reports and information about their service
- reported complaints about them, and their complaints handling procedures
- their operating jurisdiction and any protections/controls imposed in that jurisdiction
- the business continuity and critical technology system arrangements the outsource provider has in place to meet the standard in standard condition 5 – Business continuity and technology systems.

Other important information you should consider in respect of your outsource arrangements includes:

- being satisfied that each provider is, and remains, capable of performing the service to the standard required to enable you to meet your licensee obligations
- having contractual arrangements with each provider that enable you to effectively monitor their performance and take appropriate action for non-performance, and having suitable termination provisions to enable you to continue to meet your licensee obligations at all times
- ensuring that any records held by providers pertaining to your licensee obligations are readily available to you in accordance with standard condition 6 – Record keeping
- regular reviews of your outsource arrangements, at a frequency appropriate to the risk involved
- recognising that outsource arrangements and business continuity and technology systems are often interrelated (refer to standard condition 5 – Business continuity and technology systems).

## 5. Business continuity and technology systems

**Condition:** You must have and maintain a business continuity plan that is appropriate for the scale and scope of your financial institution service.

If you use any technology systems, which if disrupted would materially affect the continued provision of your financial institution service (or any other market services licensee obligation), you must at all times ensure the operational resilience of those systems – being the preservation of confidentiality, integrity and availability of information and/or technology systems – is maintained.

Your business continuity plan and your technology systems must be established, implemented and maintained in a way that supports compliance with your fair conduct programme.

You must notify us as soon as possible and, in any case, no later than 72 hours, after discovering any event that materially impacts the operational resilience of your critical technology systems.

**Explanatory note:** This condition requires you to have suitable arrangements in place to be able to manage disruptions to your business. This is intended to provide consumers with the security of continuity of relevant services and associated products they receive from financial institutions, and to ensure that consumers are treated fairly during a business disruption.

Your *business continuity plan* includes the documented procedures that guide you to respond, recover, resume and restore a pre-defined level of operation following disruption. This plan should provide for the continuity of your financial institution service generally – not just the recovery of your technology systems. It should also encompass any outsource arrangements.

Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your financial institution service, operational arrangements and exposure to disruptive events. A small financial institution with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events.

A larger or more complex financial institution, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range of disruptive events and reflect this in a more comprehensive business continuity plan.

Irrespective of the complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed and regularly tested – at least annually. Your business continuity plan must also be updated immediately if there is a material change in business location, structure or operations. When establishing, implementing and maintaining your business continuity plan and technology systems, you will need to ensure that they support, and do not hinder, the fair treatment of consumers and compliance with your fair conduct programme.

*Critical technology* is that which supports any activity, function, process, or service, the loss of which would materially affect the continued provision of your financial institution service or your ability to meet your licensee obligations.

This condition requires that you maintain the operational resilience of your critical technology. This includes:

- a) regularly identifying and reviewing your operational risks, including cyber risk and threats; and
- b) implementing measures that maintain the level of operational resilience necessary for your risk profile; and
- c) having effective processes that monitor and detect activity that impacts your operational resilience; and
- d) setting out in your business continuity plan your predetermined procedures for responding to, and recovering from, events that impact on your operational resilience.

The operational resilience of your critical technology systems should be managed within the risk tolerance set through your governance processes. We recommend that you use an appropriate, recognised framework for this purpose.

You must have arrangements in place to notify us of any technological or cyber security event that materially disrupts or affects the provision of your financial institution service, or has a material adverse impact on consumers. You do not need to notify us of minor events, such as receiving a 'phishing' email that is not successful i.e. has not materially disrupted or affected the provision of your financial institution service, and has not had a material adverse impact on consumers.

You need to provide details of the event including the affected systems, the impact on your financial institution service and consumers, projected recovery timelines, and remediation activity. If some of the details are not available at the time you discover the event, you will need to provide these details to us as soon as possible. We may also request additional information about the event, and we may specify the format or additional requirements for notifying events to the FMA.

## 6. Record keeping

**Condition:** You must have systems and processes to maintain relevant records in relation to your financial institution service. You must provide us with the records we need to monitor your ongoing capability to effectively perform the financial institution service in accordance with the licensing criteria in section 396 of the FMC Act.

Your records:

- (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us; and
- (b) may be in any language, providing that for records kept in a language other than English, if required by us, you provide in a timely manner a full translation of the record into English by a translator approved by us.

**Explanatory note:** This standard condition requires you to have systems and processes to maintain relevant records in relation to your financial institution service, and to have arrangements in place so that we can inspect your records without unnecessary delays.

Records will be relevant if they demonstrate how you have:

- established, implemented and maintained an effective fair conduct programme that complies with section 446J of the FMC Act; and
- taken all reasonable steps to comply with your fair conduct programme and with all of your market services licensee obligations.

Your records should include (without limitation):

- your fair conduct programme
- records that demonstrate how you have established, implemented and maintained your fair conduct programme
- records that demonstrate how you have taken all reasonable steps to comply with your fair conduct programme
- records that demonstrate you have regularly reviewed your fair conduct programme, and that any deficiencies identified have been promptly remedied.

Inspection and review of records may be undertaken by us at your premises or elsewhere. For example, we may request electronic copies of records and review these at our offices. Your arrangements must ensure that, if reasonably practicable, your consumers consent to us viewing or obtaining your records.

Records may be kept by another person (including any outsource provider) on your behalf, providing you can retrieve the records if required (refer to standard condition 4 – outsourcing).



## **B. Specific conditions**

We may also put additional conditions on a licence on a case-by-case basis.

Any specific conditions will be notified to you at the time we grant you your licence.

## C. Conditions imposed under regulations

Regulations made pursuant to the FMC Act may impose additional conditions on your licence. These regulations may change from time to time, so you will need to keep abreast of any new regulations.

As at November 2022, the only regulation that imposes an additional licence condition on a financial institution licence is regulation 191 of the FMC Regulations. Appendix 1 sets out this regulation, but you should refer to the FMC Act and FMC Regulations in full to understand your market service licensee obligations.

The FMC Act and FMC Regulations also contain many obligations that you will need to comply with when you have a licence, even though they are not called licence conditions. For example, section 412 of the FMC Act requires you to report various matters to the FMA as soon as practicable, including any breach (or likely breach) of your market services licensee obligations and any other material changes of circumstances. You will also need to comply with the new obligations regulating the conduct of financial institutions set out in Subpart 6A of the FMC Act.

## Appendix 1

# Conditions imposed by regulations as at November 2022

Extract from the Financial Markets Conduct Regulations 2014:

### *Conditions of licences*

#### **191 General reporting condition**

- (1) A market services licence is subject to a condition that, if any of the following occurs, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:
  - (a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that—
    - (i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event; or
    - (ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas); or
  - (b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
    - (i) the licensee;
    - (ii) an authorised body;
    - (iii) a director or senior manager of the licensee;
    - (iv) any of the key personnel of an authorised body; or
  - (c) a director or senior manager of the licensee, or any of the key personnel of an authorised body,—
    - (i) resigns, is removed, or otherwise ceases to hold the office or position; or
    - (ii) is appointed, employed, or engaged; or
  - (d) an auditor of the licensee or an authorised body—
    - (i) resigns or otherwise ceases to hold the office; or
    - (ii) is appointed (other than by way of reappointment); or
  - (e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation); or
  - (f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company); or
  - (g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.
- (2) In subclause (1)(b), relevant proceeding or action—
  - (a) has the same meaning as in regulation 5(1); and
  - (b) includes a criminal proceeding for a crime involving dishonesty; but
  - (c) does not include any proceeding commenced, or action taken, by the FMA.
- (3) In subclause (1)(g), control has the same meaning as in clause 48 of Schedule 1 of the Act.