Submission template

### Fit for purpose financial services conduct regulation

This is the submission template for the discussion document, Fit for purpose financial services conduct regulation. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on** **19 June 2024**. Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission:
	1. Delete this page of instructions.
	2. Please clearly indicate in the cover letter or email accompanying your submission if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
	3. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
		1. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
		2. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
	4. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission:
* as a Microsoft Word document to FinancialMarkets@mbie.govt.nz(preferred), or
* by mailing your submission to:

Financial Markets

Small Business, Commerce and Consumer Policy

Ministry of Business, Innovation & Employment
PO Box 1473

Wellington 6140
New Zealand

1. Please direct any questions to FinancialMarkets@mbie.govt.nz***.***

## Submission on discussion document: *Fit for purpose financial services conduct regulation*

### Your name and organisation

|  |  |
| --- | --- |
| **Name** |  |
| **Organisation (if applicable)** |  |
| **Contact details** |  |

[Double click on check boxes, then select ‘checked’ if you wish to select any of the following.]

[ ]  The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

[ ]  MBIE intends to upload submissions received to MBIE’s website at [www.mbie.govt.nz](http://www.mbie.govt.nz). If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE’s website because… [Insert text]

### Please check if your submission contains confidential information:

[ ]  I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because… [Insert text]

### Responses to discussion document questions

|  |
| --- |
| **Introduction** |
|  | Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered? |
|  |  |
| **1: Options for CoFI Act reform** |
| **A. Options for amending minimum requirements for fair conduct programmes** |
| Option A1: Remove/amend some minimum requirements for fair conduct programmes |
|  | Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option? |
|  |  |
|  | Which requirements should be removed or amended, if any? Please explain what changes you would like to be made. |
|  |  |
|  | What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)? |
|  |  |
|  | Do you have any other comments on the minimum requirements for fair conduct programmes? |
|  |  |
| Option A2: Potential additions to minimum requirements for fair conduct programmes |
|  | *What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?* |
|  |  |
|  | *What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?* |
|  |  |
|  | *Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the current requirements?* |
|  |  |
| Option A3: Remove all minimum requirements for fair conduct programmes |
|  | Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?  |
|  |  |
| Option A4: Retain minimum requirements for fair conduct programmes without change |
|  | Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?  |
|  |  |
| Proposal: proceed with Option A1 (remove/amend some minimum requirements) |
|  | Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not to proceed with the other options? Why/why not? |
|  |  |
| **B. Options for amending fair conduct principle** |
| Option B1: Keep the fair conduct principle open-ended |
| Option B2: Make the fair conduct principle definition exhaustive |
| Proposal: retain status quo (Option B1) |
|  | Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option? |
|  |  |
|  | Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not? |
|  |  |
|  | Do you have any other suggestions or comments in relation to the fair conduct principle? |
|  |  |
|  | Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section? |
|  |  |
| **2. Options for regulatory framework and powers** |
| **C. Consolidating financial market conduct licences** |
| Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service |
|  | Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?  |
|  |  |
|  | Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.  |
|  |  |
|  | Are there any other matters that should be considered around market services conduct licensing?  |
|  |  |
| **D. Enabling reliance on another regulator’s assessment** |
| Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate |
|  | Should the FMC Act be amended to enable the FMA to rely on the RBNZ’s assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.  |
|  |  |
|  | Should there be equivalent provisions enabling the RBNZ to rely on the FMA’s assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.  |
|  |  |
|  | Are there any other improvements that could be made to the way the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?  |
|  |  |
| **E. Ensuring the FMA has effective tools** |
| Option E1. Introduce change in control approval requirements |
|  | Should change in control approval requirements be introduced into the FMC Act? Please explain your answer, including why the current approach does or does not work. |
|  |  |
|  | Should change in control approval requirements apply only to firms licensed to act as financial institutions, or to all firms licensed under Part 6 of the FMC Act? Why?  |
|  |  |
|  | Do you have any other feedback on the change in control requirements option?  |
|  |  |
| Option E2: Introduce on-site inspection powers for the FMA |
|  | Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work. |
|  |  |
|  | Should an on-site inspection power apply only certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?  |
|  |  |
|  | What safeguards should be in place for on-site inspections without notice?  |
|  |  |
|  | Do you have any other feedback on the on-site inspection option?  |
|  |  |
| Option E3: Introduce an expert report power for the FMA |
|  | Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work. |
|  |  |
|  | Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?  |
|  |  |
|  | What safeguards should there be for an expert report power?  |
|  |  |
|  | Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not? |
|  |  |
|  | Do you have any other comments on the expert report power option?  |
|  |  |
| **3: Limitations and constraints on analysis** |
|  | Are there any other areas and options for change that we should consider that have not been addressed in this discussion document? |
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| **4: Implementation** |
|  | Do you have any comments on implementation of these reforms? |
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### Other comments