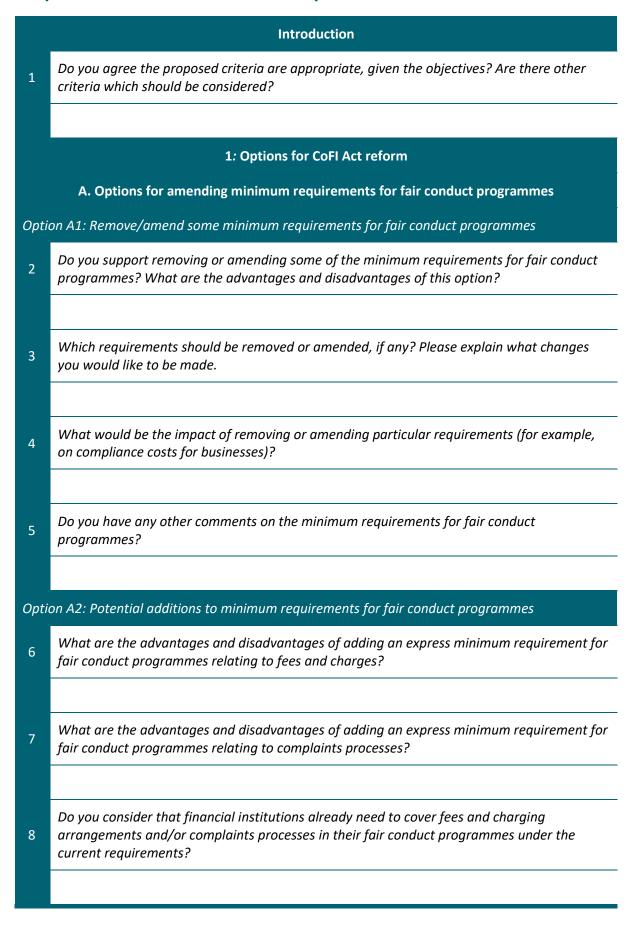
Submission on discussion document: Fit for purpose financial services conduct regulation

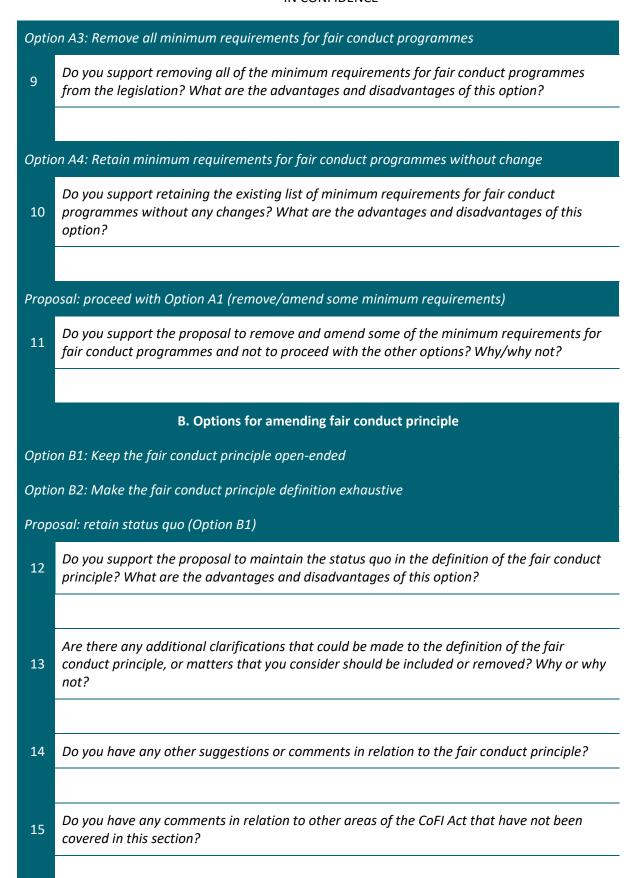
Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	KPMG, a New Zealand partnership
Contact details	Privacy of natural persons

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

Responses to discussion document questions





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 16 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 17 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 18 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 19 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 20 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 21 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 22 explain your answer, including why the current approach does or does not work.

23

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?

24

Do you have any other feedback on the change in control requirements option?

Option E2: Introduce on-site inspection powers for the FMA

25

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.

26

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?

MBIE's discussion paper acknowledges that the FMA regulates a broad range of entities¹ and that the majority of regulated firms are *already* subject to a broad on-site inspection power². MBIE expects that most inspections would *still* be carried out with notice and consent.³

We understand that MBIE intends to adopt a proportionate, risk-based approach⁴ such that any surprise on-site inspection power would apply only in *limited* circumstances rather than to *all* entities regulated by the FMA; in particular, to address misconduct by certain financial market participants such as consumer-facing financial institutions or unlicensed firms⁵, *not* auditors of FMC Act reporting entities.

We are supportive of this approach.

However, if MBIE intends to apply this power to *all* firms regulated by the FMA including auditors, we would be keen to understand the nature and extent of the problem to be solved, and how surprise on-site inspection powers would be effective in addressing that problem. It would be helpful for MBIE to share any analysis/statistics about the exercise of this power by international conduct regulators and its efficacy in achieving the desired outcome in other jurisdictions.

¹ Paragraph 116 of the MBIE Discussion Paper 'Fit for purpose financial services conduct regulation' dated May 2024

² Paragraph 120 of the MBIE Discussion Paper 'Fit for purpose financial services conduct regulation' dated May

³ Paragraph 115 of the MBIE Discussion Paper 'Fit for purpose financial services conduct regulation' dated May 2024

⁴ Paragraph 117 of the MBIE Discussion Paper 'Fit for purpose financial services conduct regulation' dated May 2024

⁵ Paragraph 116 of the MBIE Discussion Paper 'Fit for purpose financial services conduct regulation' dated May 2024

27 What safeguards should be in place for on-site inspections without notice?

- Any power to conduct an on-site inspection without notice or consent should apply only
 to the entity whose potential non-compliance is in question. For example, the FMA
 should not exercise such powers to inspect an auditor's records in order to indirectly
 collect information about the auditor's clients.
- The scope of the inspection and the documents requested should be limited to the specific regulatory concerns being investigated, with appropriate safeguards to protect documents subject to legal privilege, including the publication of clear guidelines on how to claim legal professional privilege over documents during the FMA's exercise of information-gathering powers. See <u>ASIC's Information Sheet 165</u> as an example.
- 28 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.

We are supportive of the FMA having the ability to commission expert reports. With the ability to deep dive into complex technical issues, independent experts can provide objective analysis and insights, leading to more informed and effective regulatory actions to address market misconduct.

- 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?
- 31 What safeguards should there be for an expert report power?

To provide confidence in expert reports, the selection process for independent, qualified experts should be transparent and rigorous to minimise bias and ensure objectivity.

- 32 Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?
- 33 Do you have any other comments on the expert report power option?

34

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?

4: Implementation

Do you have any comments on implementation of these reforms?

Other comments