

Forestry scheme obligations under the Financial Markets Conduct Act

Many forestry schemes will be managed investment schemes and will need to comply with new obligations under the FMC Act by 30 November 2016. New obligations include having a licensed manager and increased governance measures.

Help with the licensing process

To help forestry managers with the licensing process and to help applicants keep costs to a minimum, we have produced a licensing guide specifically for forestry managers. You can find the guide [here](#). We are also happy to engage with applicants at any stage of the process.

Some schemes may not fall within the definition of a managed investment scheme in the FMC Act, and will not have FMC Act licensing and governance obligations. Our guide sets out our view of the relevant considerations in making this important decision.

Exemption relief

In general, the Financial Markets Authority considers that forestry schemes can and should comply with the same requirements under the FMC Act as other MIS. However, there are some specific requirements where, given the characteristics of forestry schemes, we recognise the costs of full compliance outweigh the benefits. To address these matters, the FMA has approved the following exemptions for forestry schemes and their custodians.

Licensing and governing document exemption

The FMA has approved in principle exemptions for schemes with particular characteristics from the requirements to have a licensed manager and to update governing documents. The exemption will be available for managers who are not issuing any new schemes, or any new interests in existing schemes they manage. The exemption will apply to these managers when the total value under management is less than \$40 million, and there is a low level of manager activity, either because there are very few schemes under management, or, there is a relatively short period before all schemes under management are wound up.

Although these schemes will not have a licensed manager, they will be required to continue to have a licensed supervisor.

Managers who think they will be eligible for this exemption should get in touch with us as soon as possible.

Custody of real property assets

The FMA has approved relief for existing closed forestry investment schemes from the requirement for real property assets to be held by the supervisor or an independent custodian. Conditions will include a requirement that a first ranking encumbrance in favour of the supervisor is registered against the property. Other scheme assets will still be required to be held by the supervisor or an independent custodian.

The FMA has also approved a related exemption for the entity holding the real property under the first exemption from the requirement, as a custodian, to have an annual assurance engagement. The custodian of other scheme assets will still need to have an annual assurance engagement.

We anticipate these exemptions may save unnecessary costs for existing schemes that already have sufficient means in place to ensure secure holding of real property assets.

Quarterly SIPO limit break reports

We have granted relief from quarterly reporting on statement of investment policy and objectives (SIPO) limit breaks during low activity periods when no limit break has occurred.

The FMC Act requires a MIS manager to report to the supervisor on any departures from the scheme's SIPO. Additionally, managers must report quarterly to the supervisor about limit breaks that were rectified within five days.

However, because there is generally minimal activity for some years of a forest's life, many of these quarterly reports are likely to be nil reports. Therefore, the FMA has approved exemptions for managers of existing and new schemes from quarterly limit break reporting, but on the condition that if a break occurs in a quarter, the manager submits a quarterly report.

The exemption will not apply in the early stages of a forest's life when planting, pruning and thinning work is done, and during harvest.

Cash reconciliations

The FMA has approved relief from the requirement for a custodian of both existing and new forestry investment schemes to reconcile records of money daily. This is on the condition that those records are reconciled at a frequency that is appropriate for the volume and frequency of transactions. Given many forestry investment schemes will have a much lower number of transactions than other MIS, we anticipate this will save unnecessary costs where daily reconciliations would provide little value.

Obligations of corporate general partners

The final exemption approved is for existing and new schemes structured as limited partnerships where investors hold shares in a corporate general partner, and the general partner's only role is to provide voting rights for investors. Any disclosure by the general partner in this structure would not give investors any useful information. The limited partnership MIS will provide all information relevant to investors.

We expect to finalise an exemption notice or notices to give effect to these exemptions by the end of August 2016. When the exemption notice(s) is finalised you will be able to find it on our website and on the New Zealand legislation website. If you have any questions please email us at exemptions@fma.govt.nz and we will call you to discuss.