

Exemptions: Financial Advisers Act 2008

This guidance note describes FMA’s interpretation of the law and how we will apply and enforce it. If a person complies with this guidance note, then we will consider they have complied with the relevant law. While this guidance note has no other legal status and it is not binding on the Courts or third parties, we will ensure that all relevant stakeholders are aware of our interpretation.

It does not constitute legal advice. We encourage you to seek your own professional advice to find out how the legislation discussed and any other applicable laws apply to you, as it is your responsibility to determine your obligations

About this guidance note:

This guidance note is for:

- Financial Advisers
- QFEs
- Legal Counsel
- Auditors
- Senior Executives
- Supervisors
- Trustees
- Risk Officers
- Compliance Officers
- Company Directors

It explains:

The approach of the Financial Markets Authority (**the FMA**) to granting exemptions under the Financial Advisers Act 2008. It is intended to provide answers to commonly asked questions in relation to exemptions and to provide information to potential applicants on the process for making an application..

About FMA Guidance Notes

Our Guidance:

- explains when and how we will exercise specific powers under legislation
- explains how we interpret the law
- describes the principles underlying our approach
- gives practical examples about how to meet obligations.

Guidance Notes: provide guidance on a topic or topic theme. Typically we will seek industry feedback via a public consultation paper, or more targeted consultation before we release a guidance note.

Information Sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

You might also like to check the reports and papers on our website. For example, our monitoring reports describe actual practice we are seeing and our comments on this.

Document History

This version was issued in December 2014 and is based on legislation and regulations as at the date of issue. It incorporates minor amendments only to the original version issued in November 2010, updating the fees and replacing 'Securities Commission' with 'FMA'.

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1. What exemption making powers does the FMA have under the Financial Advisers Act?

The Financial Advisers Act 2008 (**FAA**) permits the FMA under section 148 to grant exemptions in respect of FAA obligations. Exemptions granted under section 148 may be subject to terms and conditions.

The FMA may in its discretion grant exemptions from compliance with any obligation under the FAA, the regulations or the [Code of Professional Conduct for Authorised Financial Advisers \(Code\)](#); and from the obligation to register under the [Financial Service Providers \(Registration and Dispute Resolution\) Act 2008 \(FSPA\)](#) by virtue of providing financial adviser services or broking services.

2. What are the statutory criteria for an exemption?

Applicants must be able to demonstrate that the statutory criteria set out in section 148 are met in relation to their exemption application. This means that applicants will be required to provide **detailed information** in support of their application including the following:

In respect of applications (other than applications for exemption from Code competence requirements) information confirming to the FMA's satisfaction that:

- the costs of compliance would be unreasonable or not justified by the benefit of compliance (s148(2)(a)), or
- the person, service or transaction is subject to the regulations of an overseas jurisdiction such that the protection of the New Zealand public is unlikely to be prejudiced (s148(2)(b)).

If the exemption would result in an authorised financial adviser being exempt from the competence obligations in the Code, then information confirming to the FMA's satisfaction that:

The exemption would not undermine consumer protection, and that

- the applicant has qualifications that are comparable to the standards required by the Code (s148 (3)(a)), or
- the costs of compliance with the obligation would be unreasonable or not justified by the benefit of compliance (s148 (3)(b)).

3. What is the FMA's policy in relation to exemptions?

The FMA's approach to exemptions under the Financial Advisers Act is as follows:

Use of power to grant exemptions

The power to grant exemptions from the law is very significant. We will use our exemption powers to address rigidities in the law and to respond to market developments not contemplated when the law was passed. However, we will base all exemptions soundly on the policy of the law.

No wider than necessary

In general, exemptions will be framed in such a way that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Class exemptions

Where possible, the FMA is likely to consider granting class exemptions so that potential candidates in similar situations to the person applying will benefit from the same treatment without needing to apply individually.

4. What if my circumstances change?

Any person or entity granted an exemption should immediately notify the FMA of any matter which could affect the continuing relevance of an exemption granted to them. This will be an express condition attaching to the exemption.

5. How long is an exemption granted for?

The FMA's policy is to grant exemptions for a limited period and for no longer than five years. The FMA may also vary or revoke an exemption (or the terms and conditions attaching to the exemption) after it has been granted (section 148A).

6. How long does it take to process an application?

It may take six to eight weeks from the time we receive all the required information until an exemption is gazetted. It may take longer if difficult questions of policy arise. You need to give us all the information promptly and allow us sufficient time to process the applications. Processing time depends on the nature and quality of the application, and the resources available to the FMA when you apply.

In the case of class exemptions, time must also be allowed for referral to Parliamentary Counsel Office, notification in the New Zealand Gazette and publishing. If your application is urgent you must provide a time frame within which (a) a decision is needed, and (b) any exemption granted needs to be gazetted. You must also provide reasons for any request for urgent consideration.

You should check the Gazette before seeking to rely on an exemption notice.

7. What are the fees and charges payable for exemption applications?

Fees are chargeable for processing exemption applications under the FAA. Charges will be based on the FMA's hourly charges and any other costs properly incurred by the FMA. This may include the costs of expert advice and publication of the exemption.

An initial deposit of \$1,265 will be required (representing an application fee of \$115 and an advance of \$1,150 in respect of fees and costs to be incurred). The charging rates for exemption applications under the FAA are \$230 per hour for time spent by FMA's board members and \$166.62 per hour for time spent by officers or employees of FMA. These amounts are inclusive of GST.

8. Disclosure of information about my application

Applicants should note that the FMA is permitted to communicate information, for a proper purpose, to the agencies listed in section 151 of the FAA. This may include information provided to it as part of an exemption application. Information held by the FMA is also subject to the [Official Information Act 1982](#) and the [Privacy Act 1993](#).

Any request for release of information we hold must be considered in accordance with the requirements of those Acts on a case by case basis. While we understand that information submitted to us will generally be submitted on a confidential basis, we suggest applicants state if they consider the information provided is confidential.

9. What other information do I need to provide?

Please refer to the [Exemption Application Form](#) for a complete list of required information. In general terms, applicants should provide the following information to the FMA:

Name of applicant

Name of person or entity applying for exemption.

Contact details

Contact person for correspondence concerning the application including address, phone number and email address.

Relevant legal obligations

The specific obligations of the FAA, the regulations or the Code which you seek exemption from.

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Subject of exemption

Name or description of person, service, transaction, document, information, or product in respect of which exemption is sought.

State the type of exemption from the list below:

- a) person or class of persons
- b) service or class of services
- c) transaction or class of transactions.

State whether the exemption is sought in respect of Act, regulations, Code or requirement to register under the FSPA by virtue of providing financial adviser services or broking services (section 148 (1)).

Notice

Applicants must provide a draft notice of their desired exemption. Applicants should refer to the relevant statutory obligations in their application.

Third party interests

Details of interests of consumers, markets or other third parties that will be affected by your proposed exemption.

Impediments to applicants' activities

Impediments to your activities created by law or published policy, and how these affect your commercial position. Explain how the proposed exemption would assist your operations.

Costs of compliance

Details of the specific circumstances that make the costs of compliance (with an obligation) either unreasonable or not justified in comparison to the benefits, including an explanation of why the effect of the law in your circumstances is anomalous.

Overseas registration

For applications made pursuant to section 148(2)(b), details of any overseas regulation to which the relevant person, service or transaction is subject.

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Publication of exemption

For individual (non-class) exemptions, the FMA is required to give notice of the exemption and the reasons why the exemption is appropriate in the Gazette. It must also publish the exemption notice on its website and have printed copies available for purchase. You will need to advise the FMA if you have any objections to or requests concerning publication of details of your exemption (see FAA sections 148B and 149(2)).

Class exemptions are treated as regulations and will be drafted by the Parliamentary Counsel Office (in consultation with FMA staff) and will be published as regulations. Applicants will be given the opportunity to comment on the exemption notice prior to publication.

Note: Exemptions from Code obligations will always be drafted and published by the FMA.

Previous contact with officials

You will need to provide details of previous contact with officials (including their names) at the FMA on this matter.

10. Do I need a lawyer?

The FMA strongly recommends that all applicants seek legal advice prior to lodging an application. Applicants may also require further legal advice during the application process.

11. Can I withdraw my application?

Applicants may withdraw their applications at any time up to the granting of the exemption. It is likely that certain FMA charges and costs will not be refunded unless there are exceptional circumstances.

Contact us

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