

JUNE 2021

Licensing interposed persons and engaged entities

This information sheet provides details on the FMA's approach to licensing financial advice arrangements involving interposed persons or engaged entities.

Overview

The new financial advice regime under the Financial Markets Conduct Act 2013 (FMC Act) came into force on 15 March 2021. It contains provision for regulated financial advice to be provided on behalf of a financial advice provider (FAP) by an entity engaged by the FAP or by an individual engaged indirectly through an interposed person.

This information sheet sets out FMA's approach to licensing financial advice arrangements and provides guidance on circumstances where an engaged entity or interposed person won't need to be licensed as a FAP.

See the glossary on page 4 for definitions of 'interposed person', 'engaged entity' and other related terms. Our [interposed persons web page](#) has background and further explanation about the interposed persons provisions in the FMC Act, and the difference between an interposed person and an engaged entity.

This information sheet does not cover how to register on the Financial Service Providers Register (FSPR).

Transitional provisions permitting engaged entities and interposed persons

Under the transitional provisions in the FMC Act, all FAPs that operate under a transitional licence and meet certain criteria can continue providing financial advice to retail clients:

- through an engaged entity, and/or
- through individuals indirectly engaged via an interposed person.

It is no longer possible to apply for a transitional licence. New applicants will need to apply for a full FAP licence.

When a FAP with a transitional licence obtains a FAP full licence, their transitional licence will *expire*.

FAP full licence conditions permitting engaged entities and interposed persons

A FAP full licence by itself does not permit a FAP to have engaged entity arrangements or interposed person arrangements. Any licensed FAP that wishes to use such arrangements must first be authorised by us through a condition on the FAP full licence (a permissive condition).

The permissive condition will be a specific condition unique to each FAP full licence. It will allow the licensee, or an authorised body, to engage an entity and/or indirectly engage an individual through an interposed person. It may also specify the following:

- the name of each engaged entity that the FAP may engage; or
- the name of each interposed person through which the FAP may indirectly engage individuals (and, if applicable, whether those individuals are permitted to be indirectly engaged as financial advisers and/or nominated representatives); and
- limitations that apply to the engaged entity arrangement or the interposed person arrangement.

The limitations we impose through the permissive condition will impact the engaged entity or interposed person as they *may* be required to:

- register on the FSPR (a registration condition); or
- be licensed as a financial advice provider (a licensing condition that requires FSPR registration as a precursor)

See 'Our approach to requiring engaged entities and interposed persons to be licensed' on page 3 for more detail.

We will take a risk-based approach when considering specific engaged entity and interposed person arrangements, including whether to set a limitation on the permissive condition.

If a permissive condition is imposed, the FMA will not include a limitation requiring an interposed person or engaged entity to be licensed where it identifies a low risk of harm to retail clients. This is discussed in the section below.

Our assessment of the engaging FAP's application for a full licence with a permissive condition

When reviewing FAP full licence applications, we will consider the structure of the FAP and its advice arrangements at a more detailed level than during transitional licensing. FAP full licence applications that include arrangements for engaged entities or interposed persons will be subject to additional FMA scrutiny, to ensure that the end-to-end arrangements and capabilities of the parties provide the necessary protection for retail clients.

When assessing such applications, we will seek to understand the full nature of each arrangement with the parties involved (i.e. with the interposed person or engaged entity) and how retail clients are protected, including:

- any formal agreements that are in place covering each arrangement;
- whether roles and responsibilities are clearly defined;
- the extent to which the engaging FAP is relying on the processes and controls of other parties;

- the engaging FAP's capability and the adequacy of its oversight processes;
- whether there is any potential overlap between the retail clients of the parties, and how this is addressed;
- whether any individuals or entities will also be engaged by any other FAPs.

The information we consider when assessing a FAP full licence application will inform whether to permit a FAP to:

- engage *some* or *all* of the entities; and/or
- indirectly engage individuals through *some* or *all* of the interposed persons

proposed in the licence application. This will be done by way of a permissive condition.

Note that our assessment may also enable identification of arrangements that do *not* require a permissive condition to be added to the FAP full licence, as they are not interposed person or engaged entity arrangements.

As part of the assessment, we will also determine whether any limitations should be applied to the permissive condition – with priority given to the protection of retail clients, consistent with the intent of the new legislation.

Our approach to requiring engaged entities and interposed persons to be licensed

We may impose limitations on the permissive condition, including a requirement for an interposed person or engaged entity to hold its own FAP full licence.

When an engaged entity arrangement will not require the engaged entity to be licensed

Taking a risk-based approach, we will not impose a condition for an engaged entity to be licensed where we consider the arrangement is simple and does not raise risks to retail clients – specifically, where the engaged entity:

- does not provide financial advice services to its own retail clients;
- is an engaged entity for only one engaging FAP; and
- provides financial advice to retail clients of the engaging FAP only.

See Scenario 1 of the Appendix on page 6.

When an interposed person arrangement will not require the interposed person to be licensed

Taking a risk-based approach, we will not impose a condition for an interposed person to be licensed where we consider the arrangement is simple and does not raise risks to retail clients – specifically, where the interposed person:

- does not provide financial advice services to its own retail clients;
- is an interposed person for only one engaging FAP; and
- employs financial advisers that provide financial advice to retail clients of the engaging FAP only.

See Scenario 2 of the Appendix on page 7.

Where the simple arrangement does not apply

Where the simple arrangement does not apply, we may impose a limitation on the permissive condition, requiring the interposed person or engaged entity to get its own FAP full licence.

See Scenario 3 of the Appendix on page 9.

Further advice or information

We encourage you to carefully read this information sheet and seek your own legal advice where necessary. This information sheet is not intended to provide legal advice or a complete summary of the matter. Contact us if you have any questions about this information sheet.

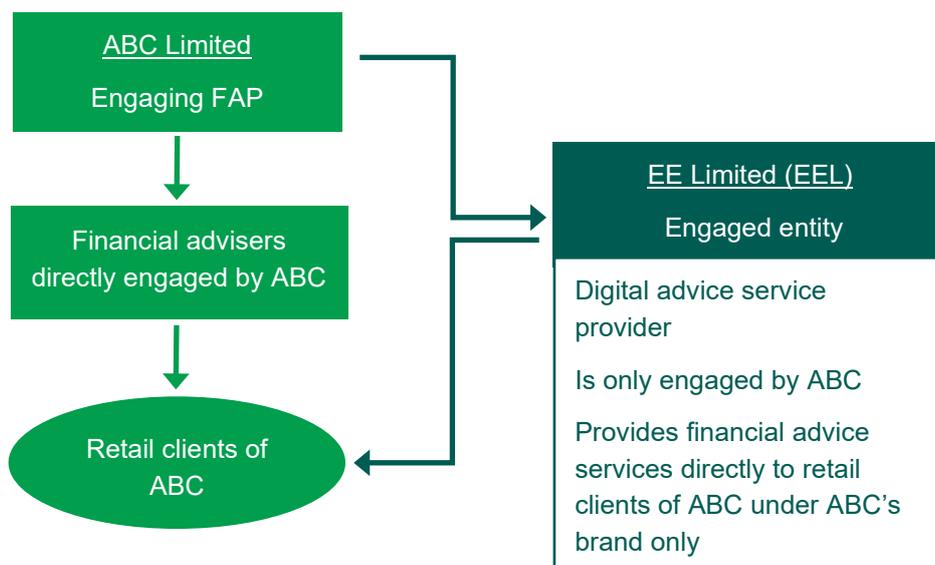
Glossary

Term	Explanation
Authorised body	An entity named on a financial advice provider's licence as an authorised body that can provide the licensed service without needing its own licence.
Engaged entity arrangement	An arrangement where a financial advice provider ('engaging FAP') engages an entity ('engaged entity') directly to give advice on the engaging FAP's behalf.
Interposed person arrangement	<p>An arrangement where a financial advice provider ('engaging FAP') engages individuals (financial advisers and/or nominated representatives) indirectly through one or more other persons (the 'interposed persons') to give advice on behalf of the engaging FAP.</p> <p>See our interposed persons webpage and the MBIE fact sheet "Engaging individuals through 'interposed persons' to give financial advice" for more information.</p>
Licensing condition	Where a licensing condition is imposed by the FMA as a limitation within a permissive condition, the engaged entity or interposed person will need to obtain a FAP full licence (for which registration on the FSPR is a precursor) before the engaging FAP may use their services.
Limitations	Limitations are part of the permissive condition that will impact the arrangement between the FAP licensee and the engaged entity or interposed person. The limitations may include a registration condition or licensing condition.
Permissive condition	The permissive condition is a specific condition unique to each FAP full licence. It allows the licensee, or an authorised body, to engage an entity and/or indirectly engage an individual through an interposed person.
Registration condition	Where a registration condition is imposed by FMA as a limitation within a permissive condition, the engaged entity or interposed person will be required to register on the FSPR before the engaging FAP may use their services. Registration on the FSPR will allow retail clients to find out information about which services the engaged entity or interposed person is registered to provide, their business address and the dispute resolution scheme they belong to.
Simple arrangement	An engaged entity arrangement or interposed person arrangement that meets the threshold set by FMA and means the engaged entity or interposed person does not have to obtain their own FAP full licence.

Appendix

The appendix provides examples of our approach to considering whether a permissive condition will be included and, if so, whether the interposed person or engaged entity will be required to be licensed as a FAP.

Scenario 1 – Engaged entity



In this scenario, ABC is a transitional FAP that directly engages financial advisers to provide financial advice on behalf of ABC to its retail clients. ABC also has an arrangement in place with EEL, an entity that provides financial advice to retail clients of ABC through a digital advice service.

ABC applies for a FAP full licence (Class 3 service, to allow them to engage EEL as an engaged entity).

The assessment of ABC's FAP full licence application considers whether the engaged entity arrangement between ABC and EEL is a simple arrangement. The application shows that EEL, the engaged entity:

- does not provide financial advice services to its own retail clients;
- is an engaged entity for only ABC; and
- provides financial advice to the retail clients of ABC only.

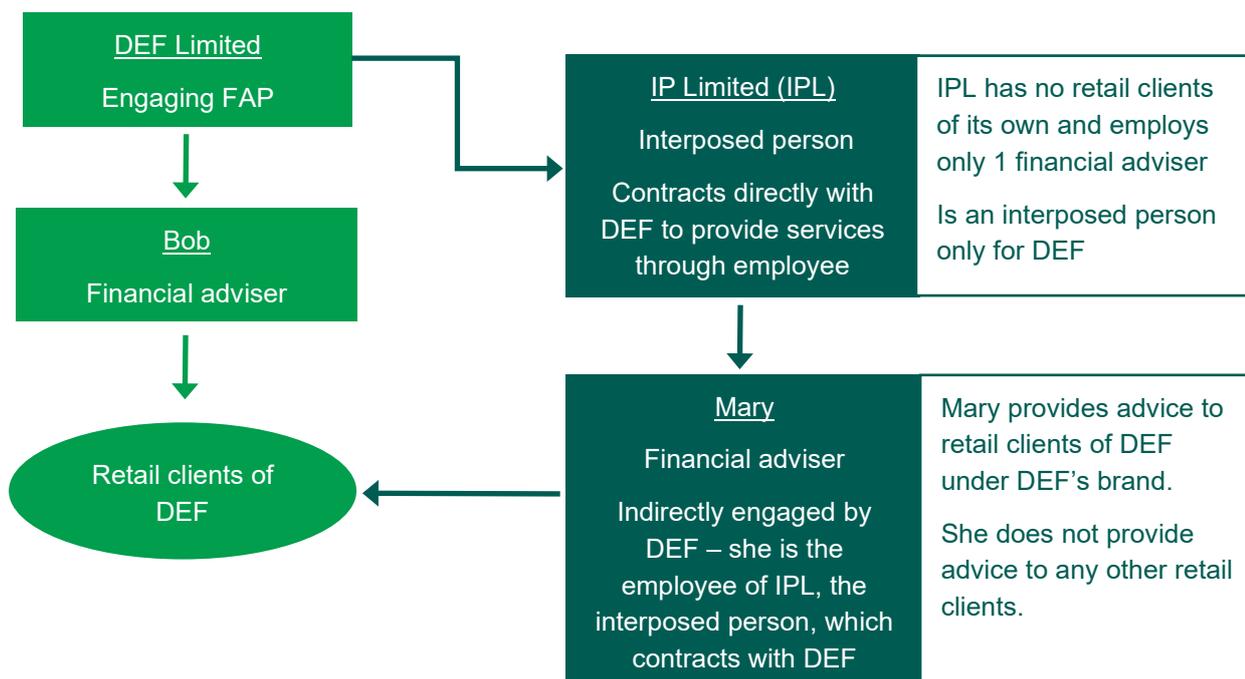
As this engaged entity arrangement meets the requirements of a simple arrangement, FMA will not require the engaged entity EEL to be licensed as a full FAP.

Please note that the assessment of ABC's full FAP licence application will also look into whether ABC has the necessary oversight over EEL, for example whether it has processes in place to record the financial advice and disclosure provided by EEL on behalf of ABC. We may also assess EEL's policies and processes, including but not limited to its capability, IT systems and client care standards.

The assessment confirms that ABC's processes include a regular check to ensure that EEL's systems and processes meet the expected standards and that EEL is not an engaged entity for any other FAP. There are regular meetings between ABC and EEL to review the arrangement and for ABC to confirm that EEL is meeting its obligations and performing the functions that ABC relies on.

After consideration, we grant ABC a FAP full licence with a permissive condition permitting ABC to engage EEL as an engaged entity that may be the engaged entity only for ABC. We do not impose a limitation on the permissive condition requiring EEL to be licensed as a FAP itself because the engaged entity arrangement in this situation meets the requirements of a simple arrangement.

Scenario 2 – Interposed person



This scenario reflects a situation where a person contracts their services through a company.

In this scenario, DEF is operating under a FAP transitional licence and *directly* engages Bob as a *financial adviser* to provide financial advice to DEF’s retail clients. Bob’s financial adviser service on the FSPR shows that he is engaged by DEF.

Mary is a *financial adviser* who is indirectly engaged by DEF through the entity IPL to provide financial advice on financial products to DEF’s retail clients. IPL is operating under a FAP transitional licence. IPL does not have its own retail clients.

From 15 March 2021 Mary is *indirectly* engaged as a *financial adviser* by DEF, and IPL is an *interposed person*, as permitted by the transitional provisions. Mary’s financial advice service on the FSPR shows that she is a financial adviser engaged by DEF, in addition to her engagement by IPL.

FAP full licence

After the start of the new regime, DEF applies for a FAP full licence (Class 2) so it can continue to engage financial advisers.

The assessment of DEF’s FAP full licence application considers whether the interposed person arrangement between DEF and IPL meets the requirement of a simple arrangement. The application shows that IPL, the interposed person:

- does not provide financial advice services to its own retail clients;
- is an interposed person for only DEF; and
- has employed a financial adviser, Mary, who provides financial advice to the retail clients of DEF only.

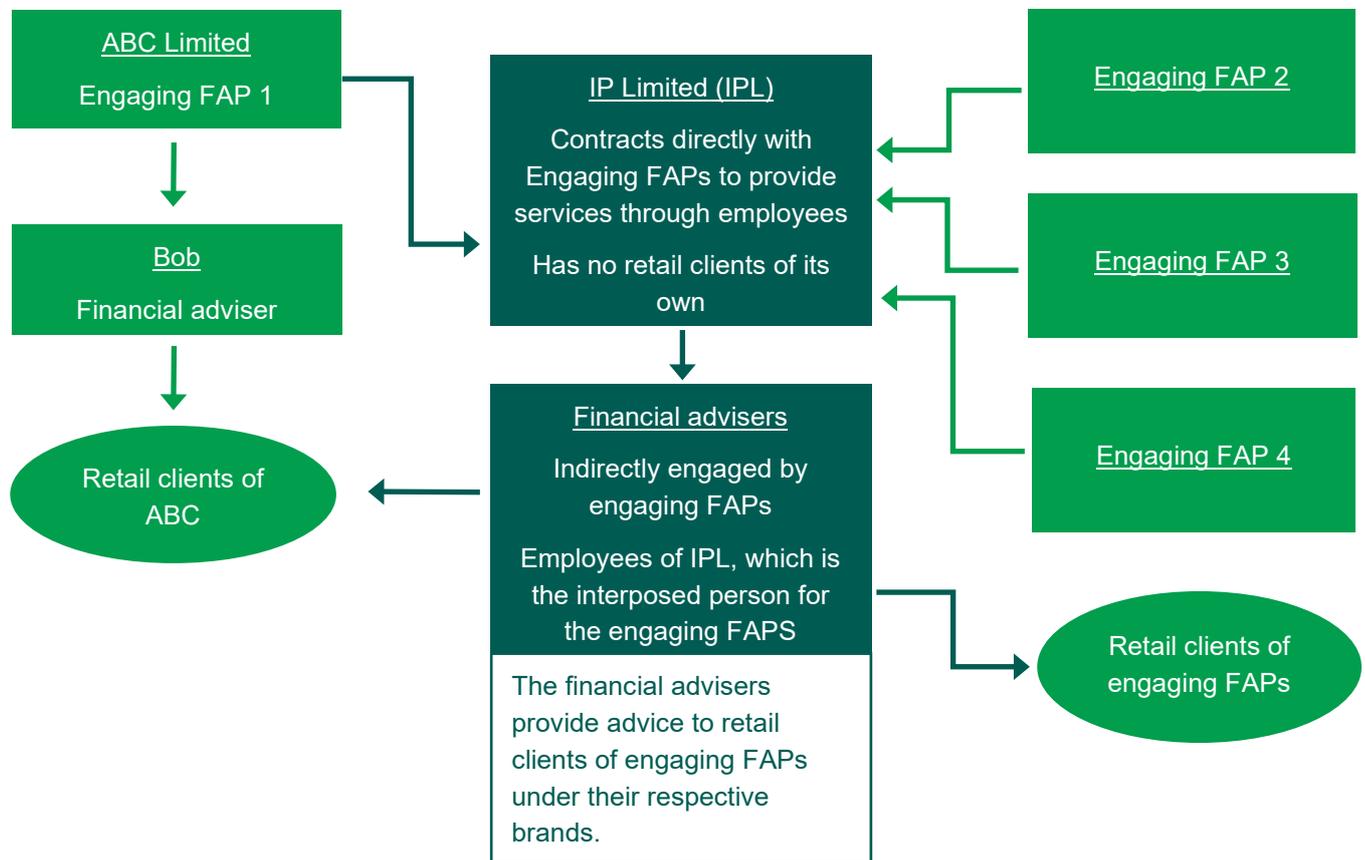
As this interposed person arrangement meets the requirements of a simple arrangement, FMA will not require the interposed persons IPL to be licensed as a full FAP.

Please note that the assessment of DEF's full FAP licence application will also look into whether DEF has the necessary oversight of IPL. The assessment confirms that DEF has the necessary processes in place to record the financial advice and disclosure that Mary provides on behalf of DEF. DEF's processes also include a regular check to ensure that Mary has not been engaged by any other FAP.

DEF confirms that they regularly review a sample of Mary's financial advice provided to DEF's retail clients. There are regular meetings between DEF and Mary to review the arrangement and for DEF to confirm that IPL and Mary are meeting their obligations and performing the functions that DEF relies on.

After consideration, we grant DEF a FAP full licence with a permissive condition *permitting* DEF to *indirectly* engage *financial advisers*, through *interposed person* IPL, which may be an interposed person only for DEF. We do not impose a limitation on the permissive condition requiring IPL to be licensed as a FAP itself, as the interposed person arrangement in this situation meets the requirements of a simple arrangement.

Scenario 3



The interposed person IPL is an interposed person for multiple FAPs, including ABC. Our assessment of ABC's FAP full licence will consider wider factors impacting the arrangement.

The assessment of ABC's FAP full licence application considers whether the interposed person arrangement between ABC and IPL meets the requirement of a simple arrangement. It is determined that IPL, the interposed person:

- does not provide financial advice services to its own retail clients;
- is an interposed person for a number of engaging FAPs, including ABC; and
- has employed financial advisers that provide financial advice to the retail clients of the engaging FAPs, including ABC.

In this scenario, the interposed person arrangement does not meet the requirement of a simple arrangement. After consideration, ABC is granted a FAP full licence with a permissive condition *permitting* ABC to *indirectly* engage *financial advisers*, through *interposed person* IPL and with a limitation imposed that requires IPL to be a *licensed* FAP in order for ABC to indirectly engage its employees as financial advisers.

Because IPL is already transitionally licensed, ABC may continue the existing arrangement without interruption. Provided IPL obtains a FAP full licence before their FAP transitional licence automatically expires in March 2023, ABC's arrangement will continue to be permitted as long as IPL holds its FAP full

licence. The transitional provisions applicable to ABC and IPL are unaffected and will continue while they both operate under transitional licences.

When IPL applies for a FAP full licence for the limited purpose of carrying out its activities as an interposed person, IPL seeks restrictions on its licence application as it does not intend to provide services as a full FAP. This is communicated to FMA via email to licensing@fma.govt.nz. FMA will take this into consideration at the time of assessing the application. FMA grants the licence to IPL with a specific condition that prevents it from providing financial advice on its own account, or engaging individuals to provide financial advice on its behalf to retail clients. IPL will be limited to acting as an interposed person.