NEW ZEALAND | COMPANIES OFFICE
FINANCIAL SERVICE PROVIDERS REGISTER

Financial services - definitions

Contents

Financial advisers and financial adviser services

Definitions of registered financial adviser, authorised financial adviser, investment planning service, personalised and class advice, and retail and wholesale clients can be found on the Financial Markets Authority website.

Visit the Financial Markets Authority website now.

Deposit taker

A deposit taker is a person who:

(a) offers debt securities to the public in New Zealand; AND
(b) carries on the business of borrowing and lending money, or providing financial services, or both;

Including:

(i) a building society incorporated under the Building Societies Act 1965 or 1908, unless the building society is a registered bank; and
(ii) a credit union registered under the Friendly Societies and Credit Unions Act 1982 (including an Association).

But not including:

(i) an issuer of a collective investment scheme:
(ii) a registered bank:
(iii) a local authority:
(iv) the Crown (including all Ministers and all departments but excluding Crown Entities and State Owned Enterprises).

Examples of deposit-takers include:

- Finance companies
- Credit Unions
- Building Societies

What are debt securities?

"Debt Securities" are investments where people lend money to, or deposit money with, an institution in exchange for the payment of interest or some other right in return. Some investments are secured over the assets of the institution (but not always) by way of a debenture.

(s2 Securities Act 1978)

Common debt securities are debentures (where the investment is secured over the assets of the institution), bonds (such as New Zealand Government Stock), and capital notes.

Who is an issuer?

A legal entity that offers investments to the public to finance its operations.

Registered bank

A registered bank is a financial institution that is included in the 'List of registered banks in New Zealand' that is maintained by the Reserve Bank under section 69 of the Reserve Bank Act 1989.

The current list of registered banks in NZ can be found here.

Contributory mortgage broker

Contributory mortgage brokers are individuals or body corporates registered under the Securities Act (Contributory Mortgage Regulations) 1988.

A contributory mortgage broker is someone that offers an interest in a contributory mortgage to the public, or manages interests (that have been offered to the public) in a contributory mortgage.

A contributory mortgage is an investment vehicle that amalgamates a number of investor contributions into a larger sum, which is then advanced to a borrower.

Contributory Mortgage Brokers must be registered under the Securities Act (Contributory Mortgage) Regulations 1988 and their names can be searched at www.companies.govt.nz

Participating in the offer of a security to the public as an issuer

Issuers offer investments to the public to finance their operations.

In relation to an equity security or a debt security – the issuer is the person on whose behalf any money paid in consideration of the allotment of the security is received.

In relation to a participatory security, the issuer is the manager.

In relation to an interest in a contributory mortgage, the issuer is the contributory mortgage broker.

In relation to a unit in a unit trust, the issuer is the manager.

In relation to a life insurance policy, the issuer is the life insurance company that is liable under the policy.

In relation to an interest in a superannuation scheme, the issuer is the superannuation trustee of the scheme.

What is an equity security?

An equity security is any interest in or right to a share in, or in the share capital of, a company (such as preference shares and company stock).

What is a participatory security?

A participatory security is a partnership entity that invites investment from members of the public, such as forestry and joint venture partnerships.

What is an interest in a superannuation scheme?

An interest in a superannuation scheme is an interest or right to participate in any capital, assets, earnings, or other property of a superannuation scheme.

Trustee of debt securities

A trustee of debt securities is the person appointed as a trustee in respect of a debt security for the purposes of the Securities Act 1978.

A debt security is an investment where people lend money to, or deposit money with, an institution in exchange for the payment of interest or some other right.

Common debt securities are debentures (where the investment is secured over the assets of the institution), bonds (such as New Zealand Government Stock), and capital notes.

Examples include:

• Trustee corporations
• Trustee companies

Unit trustee

A unit trustee is the person in whom any money, investments and other property of a unit trust are vested (or if that person is a nominated person, the trustee that nominated that person).

Examples of trustees of unit trusts include:

• Trustee corporations
• Trustee companies
• Some approved Banks

What is a unit trust?

A unit trust is a trust in which the beneficial interest in the trust property is divided into fractions, or units, which are then offered to the public.

Investors participate in income and gains arising from the money, investments and other property that are the subject of the trust.

A unit trust is established by a trust deed made between a trustee and a manager, and registered under the Unit Trusts Act 1960.

Superannuation trustee

A superannuation trustee is a person or company appointed under a trust deed to look after investors' interests and administer the trusts governing a registered superannuation scheme under the Superannuation Schemes Act 1989.

Examples of trustees of superannuation schemes include:

- Trustee companies
- Private companies
- Individual trustees

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What is a superannuation scheme?

Any trust established by its trust deed principally for the purpose of providing retirement benefits to natural persons (including KiwiSaver Schemes).

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Exemption from the need to register

Regulation 7 of the Financial Service Providers (Exemptions) Regulations 2010 exempts individual trustees from having to register on the FSPR in their own name as individual financial service providers BUT all trustees of the trust, or the superannuation scheme, must jointly register as an unincorporated body.

A Board of Trustees can register on the FSPR as 'The Trustees of the [name] Trust' or 'The Trustees of the [name] Superannuation Scheme' (as examples). To do this, trustees must choose their **ENTITY TYPE** as **OTHER ENTITY** when they start the registration application. Choosing this entity type will allow Trustees to register as a group as an unincorporated body.

Please note - All trustees must be named in the FSPR registration application as the equivalent of 'directors' so that they can be checked for disqualification purposes under section 14 (that is, they are not an un-discharged bankrupt for example). Those details will not be available for public view on the FSPR but will be held by the Registrar of Financial Service Providers and can be shared with other regulatory agencies on request.

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Statutory supervisor of participatory securities

A person or company appointed to look after investors' interests in participatory security type investments.

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Promoter of securities offered to the public

A person (including a body corporate) who is instrumental in the formulation of a plan or programme pursuant to which securities are offered to the public.

The Securities Act 1978 says that all directors of a promoter company are promoters themselves. Regulation 4 of the new Financial Service Providers (Exemptions) Regulations 2010 however exempts directors of a body corporate promoter from having to register as a financial service provider in their own name in respect of their "participation" in an offer of securities by the company of which they are a director.

A director or officer of the issuer of the securities, or a person acting solely in his or her professional capacity in respect of the offer, is not considered to be a promoter under the Securities Act 1978.

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Manager of a participatory security or unit trust

In relation to a participatory security, the manager is a person on whose behalf any money paid in consideration of the allotment of the security is received, or with a substantial obligation to security holders to act, in the continuing administration or management of the scheme to which the security relates – or both.

This does not include the trustee if the person acts in the continuing administration or management of the scheme to which the security relates, solely in the person's capacity as a participatory security trustee.

In relation to a unit trust, the manager is the company which has the responsibilities, powers and functions of the manager of the unit trust under the Unit Trusts Act 1960.

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Providing credit under a credit contract

Granting a right to another person (under a credit contract) to
(a) defer payment of a debt,
(b) incur a debt and defer payment or
(c) purchase property or services and defer payment for that purchase (in whole or in part).

Includes any transactions that in substance or effect amount to a credit contract, even if an individual contract on its own doesn’t appear to be a credit contract.

(s6 & 7 Credit Contracts and Consumer Finance Act 2003)

Examples include:

- A company in the business (in whole or part) of providing credit to consumers for personal or household purposes with interest charges, credit fees or security taken under the contract
- Businesses offering mortgages, credit sales, credit card debts and overdrafts.

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What is a credit contract?

For the purposes of the FSP Act a credit contract is any contract under which credit is provided to a person (which includes a natural person or business) for:

- the purchase of goods or services (for example, credit sales)
- general purposes undisclosed to the provider (for example, cash loans, credit cards and arranged overdrafts)
- the purchase of land, buildings, or for improvements (for example, mortgagees, buy-back transactions and revolving credit arrangements)
- investment purposes (for example, investing in stocks, a company or developing a business).

However the FSP Act does not apply to credit contracts where:

- no interest is charged or payable;
- an account goes into unarranged overdraft;
- the agreement is for the sale of property, or the provision of services, where the amount payable is the agreed price of the property or service and must be paid within two months from the date the contract is made;
- goods are leased for personal or household use where the amount paid by the lessee is the same or more than the cash price of the goods and/or they have an option to buy the goods outright for an amount equal to or less than their market value at the end of the lease term.

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Exemption for the interim provision of credit

Regulation 10 of the Financial Service Providers (Exemptions) Regulations 2010 exempts from registration those persons whose only/principal business is the sale of goods and non-financial services but who provide credit to customers on an interim basis in order to facilitate a sale before assigning the credit contract to a third party within one working day.

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Does my entity need to register if it is only servicing its outstanding loans?

The Act requires credit providers to be registered. Providing credit generally means providing a loan or having a debt due to you. The requirement covers credit provided under a credit contract, as set out in the Credit Contracts and Consumer Finance Act 2003 (with some additional exclusions set out in the Financial Service Providers Act). This covers lending to businesses as well as to retail customers.

Your entity provides credit (and needs to be registered) until the credit is completely repaid (or forgiven). Providing credit includes having a loan due to you that was originally made by another provider. For example, you will usually need to register if you have bought or been assigned a loan.

Credit providers providing credit to retail customers will also need to belong to a dispute resolution scheme.