MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr David Clark	**Portfolio**	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Markets Authority (Levies) Amendment Regulations 2022	**Date to be published**	2 September 2022

List of documents that have been proactively released		
Date	**Title**	**Author**
August 2022	Financial Markets Authority (Levies) Amendment Regulations 2022	Office of the Minister of Commerce and Consumer Affairs
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Information redacted	**NO**

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Financial Markets Authority (Levies) Amendment Regulations 2022

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Financial Markets Authority (Levies) Amendment Regulations 2022 (Amendment Regulations).

Policy

2. The Financial Markets Authority (FMA) requires additional funding as it will soon be responsible for two new legislative regimes:

    2.1. Conduct of Financial Institutions (CoFI): The Financial Markets (Conduct of Institutions) Amendment Act 2022 will require all registered banks, licensed insurers and non-bank deposit takers (NBDTs) that provide relevant consumer services and associated products to comply with a principle of fair conduct and to treat consumers fairly.

    2.2. Climate-related Disclosures (CRD): The Financial Sector (Climate-related Disclosures and Other Matters) Amendment Act 2021 will make climate-related disclosures mandatory for large publicly-listed companies, insurers, banks, NBDTs and investment managers under the Financial Markets Conduct Act 2013.

3. On 11 April 2022, Cabinet agreed to the Budget 2022 package and authorised the Minister of Finance and relevant appropriation Ministers to jointly agree to changes to the appropriations and/or capital injections and related recommendations to give effect to each of the agreed initiatives in the Budget 2022 Significant Package [CAB-22-MIN-0129 refers].

4. Following the above decisions, on 12 April 2022, the Minister of Finance and I agreed that:

    4.1. the FMA's appropriation will increase by:

    4.2. $15.610 million to $76.415 million (including one-off capital expenditure of $0.014 million for the conduct of financial institutions regime) in 2025/26; and

    4.3. by $15.596 million to $76.401 million in 2026/27 and outyears;

4.4. the increase would be phased over four financial years commencing in 2022/23;

4.5. the Crown's contribution to the FMA's operational funding will increase by $0.405 million in 2022/23, $0.774 million in 2023/24, $1.338 million in 2024/25 and $1.626 million per annum in 2025/26 and outyears;

4.6. that $6.408 million in 2022/23, $8.093 million in 2023/24, $10.860 million in 2024/25 and $13.970 million in 2025/26 and outyears of the appropriation increase will be recovered from levy payers (non-tax revenue).

5. This increase will provide the FMA with funding to prepare for, implement, and oversee the two new regimes.

6. On 13 April 2022, the Cabinet Economic Development Committee (**DEV**) agreed to make changes to the Financial Markets Authority levy, to give effect to the decision at paragraph 4(d) above, following Cabinet's agreement to increase FMA funding through Budget 2022, [DEV-22-MIN-0088].

7. In particular, Cabinet agreed to:

7.1. add two new classes to capture, and increase levies, for entities within the scope of the CoFI regime; and

7.2. add a new class and set levies for entities within the scope of the CRD regime.

8. Pursuant to section 68 of the Financial Markets Authority Act 2011 (FMA Act), regulations may be made prescribing levies to recover a portion of the FMA's costs in performing or exercising its functions, powers and duties under the FMA Act and any other enactment, and the costs of collecting the levy money.

9. The attached Financial Markets Authority (Levies) Amendment Regulations 2022 give effect to Cabinet's decision that a portion of the costs for the next four financial years (commencing in 2022/23) will be recovered by setting new levies for entities within the scope of the CoFI and CRD regimes.

10. Levies for all other entities who are not within the scope of the CoFI and CRD regimes remain unchanged.

11. Annexure One contains a summary of the new levy amounts over the next four years for entities within the scope of the CoFI and CRD regimes. I note that following DEV's approval of changes to the FMA levies on 13 April 2022, five of the FMA levies specified in the Cabinet paper Annexure were incorrect due to a minor rounding or transpositional error. These have been corrected in Annexure One.

Entity responsible for collection of the FMA levies

12. The majority of FMA levies are collected online by the Companies Office as the Registrar of Financial Service Providers from market participants when they file their annual confirmation of registration as a financial service provider.

13. The new CRD levy will be collected by the FMA as a temporary measure until the Companies Office can implement the IT system changes to collect these levies.

14. I will seek further decisions from Cabinet at a later date to give effect to required changes to the Financial Markets Authority (Levies) Regulations 2012 for the Registrar of Financial Service Providers to collect the CRD levy in place of the FMA.

Timing

15. These regulations will come into force on 1 September 2022. DEV previously noted that there is a possible risk of under-recovery by the Crown as a consequence of the commencement of regulations from 1 September [DEV-22-MIN-0088].

16. I am seeking a waiver of the 28-day rule as commencement from 1 September is needed to avoid the purpose of the regulations being defeated (i.e. to ensure that part of the FMA's costs for these new legislative regimes are recovered from levy payers) and to avoid the risk of any further potential fiscal cost to the Crown.

17. I do not believe that entities affected by these new levy changes will be disadvantaged by a waiver of the 28-day rule as the new levy amounts were communicated to industry after the announcement of Budget 2022.

Compliance

18. The Amendment Regulations comply with:

    18.1. the principles of the Treaty of Waitangi;

    18.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

    18.3. the principles and guidelines set out in the Privacy Act 2020;

    18.4. relevant international standards and obligations;

    18.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

19. The requirements on financial institutions created by the Financial Markets (Conduct of Institutions) Amendment Act 2022 (Amendment Act) are expected to commence in early 2025. In particular, the requirement to operate under a market services licence in order to act as a financial institution will not commence until then.

20. The effect of the regulations, however, will be to make the entities that will be subject to this requirement liable for the levy from 1 September 2022. In other words, the relevant entities will be required to pay the new levy well in advance of the requirement to which it relates coming into force.

21. This order of events is authorised by the relevant empowering provision in the FMA Act. In particular:

    21.1. all of the entities to be levied come within the definition of persons able to be levied and are already subject to FMA levies;

    21.2. levies are able to be prescribed on the basis that a portion of the costs of the FMA in performing or exercising its functions, powers, and duties are able to be fully met by levies;

    21.3. the activities to be undertaken by the FMA in the relevant period can all be described as being part of the FMA's functions under the FMA Act.

22. It is necessary to make relevant entities liable for the levy from 1 September 2022 because there is a lot for the FMA to do to support institutions to prepare to meet their obligations over the next two years before the requirements come into force. This includes the FMA needing to:

    22.1. prepare guidance for institutions in relation to licensing requirements, fair conduct programme requirements, and approach to intermediaries

    22.2. develop standard conditions for licences;

    22.3. create systems for considering licence applications;

    22.4. review, assess and process licence applications (expected to be received and considered from July 2023).

23. The levies generally have been structured to increase each year for the next few years. This reflects that the FMA will build up its operations and be working with entities prior to the requirements coming into force.

24. There is however, a risk that the Regulations Review Committee may consider that imposing a levy well in advance of the requirement to which it relates coming into force is an "unusual or unexpected use" of the regulation-making power, in terms of Standing Order 327(2)(c).

25. However, I consider this is a low risk because:

    25.1. the new legislative regimes inevitably require preparatory activities to be undertaken prior to obligations commencing;

25.2. levied entities will benefit from guidance issued by the FMA, the FMA need to have systems to accept licence applications from mid-2023, and the FMA otherwise being prepared to undertake monitoring and enforcement activities once the requirements are in force;

25.3. as part of the public consultation process, levied entities did not raise issues with needing to pay levies before the requirements came into force and recognised the need to pay levies to support the FMA's functions

25.4. what is proposed is authorised by the relevant empowering provision.

Certification by Parliamentary Counsel

26. The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet subject to the risk identified in paragraphs 19 to 25 regarding the Regulations Review Committee.

Impact Analysis

27. A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time policy approvals for the contents of the regulations were obtained from Cabinet in April 2022 [DEV-22-MIN-0088].

Proactive release

28. This paper will be published on MBIE's website within 30 business days of Cabinet's decision, subject to withholdings as appropriate and consistent with the Official Information Act 1982.

Consultation

29. The FMA, the Treasury and the Parliamentary Counsel Office were consulted on this paper. The Department of the Prime Minister and Cabinet (Policy Advisory Group) and the Reserve Bank of New Zealand were informed.

Recommendations

I recommend that the Cabinet Legislation Committee:

1. **note** that on 13 April 2022, the Cabinet Economic Development Committee agreed to make changes to the Financial Markets Authority levy [DEV-22-MIN-0088 refers] to:

    1.1. increase the Financial Markets Authority's appropriation by:

        1.1.1. $15.610 million to $76.415 million (including a one-off capital expenditure of $0.014 million for the conduct of financial institutions regime) in 2025/26; and

        1.1.2. $15.596 million to $76.401 million in 2026/27 and outyears;

1.2. recover $6.408 million in 2022/23, $8.093 million in 2023/24, $10.860 million in 2024/25 and $13.970 million in 2025/26 and outyears of the appropriation increase from levy payers (non-tax revenue).

2. **note** that the increase (in paragraph 1 above) in the Financial Market Authority's funding will enable it to prepare for, monitor, and enforce two new incoming legislative regimes: Conduct of Financial Institutions and Climate-related Disclosures;

3. **note** that the Financial Markets Authority (Levies) Amendment Regulations 2022 will:

   3.1. give effect to the decision referred to in paragraph 1 above for 2022/23, 2023/24, 2024/25 and 2025/26 and outyears; and

   3.2. come into force on 1 September 2022;

4. **note** that the attached regulations contain minor amendments to five individual levy amounts in the table in Annexure One (from the amounts that were previously set out in the Cabinet paper considered by the Cabinet Economic Development Committee on 13 April 2022) to account for either a rounding or transposition error;

5. **note** that:

   5.1. further amendments to the Financial Markets Authority (Levies) Regulations 2012 will be required at a later date to provide for the Registrar of Financial Service Providers to collect the Climate-related Disclosures levies; and

   5.2. I will seek approval from the Cabinet Legislation Committee at a later date for these amendments which is consistent with the policy decisions of Cabinet Economic Development Committee on 13 April 2022 [DEV-22-MIN-0088 refers];

6. **note** that a waiver of the 28-day rule is sought:

   6.1. so that the regulations can come into force on 1 September 2022;

   6.2. on the grounds that it is necessary to avoid the purpose of the regulations being defeated and to avoid any further potential fiscal cost to the Crown;

7. **agree** to waive the 28-day rule so that the regulations can come into force on 1 September 2022;

8. **authorise** submission to the Executive Council of the Financial Markets Authority (Levies) Amendment Regulations 2022.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Annexure One

The table below sets out the levy changes. Existing classes currently set out in the Financial Markets Authority (Levies) Regulations 2012 whose levies will not change are not set out below.

Levies below are **inclusive of GST**.

Levy class	Description	Type of levy (fixed levy or tiers)	New 2022/23 levy	New 2023/24 levy	New 2024/25 levy	New 2025/26 levy
Class 2	Registered FSPs that are registered banks or licensed non-bank deposit takers (other than persons included in class 2A)	*No change to current tiers existing in Class 2*	*N/A*	*N/A*	*N/A*	*N/A*
Class 2A	Registered FSPs that - a. are registered banks or licensed non-bank deposit takers; and b. in order to provide the service referred to in section 388(ca) of the Financial Markets Conduct Act 2013 (FMC Act), are required to hold, or be authorised to provide the service under, a	Total assets exceed $50 billion	$2,121,750	$2,332,200	$2,783,000	$3,369,500
		Total assets exceed $10 billion but not $50 billion	$644,000	$724,500	$839,500	$1,012,000
		Total assets exceed $2 billion but not $10 billion	$169,050	$182,850	$218,500	$235,750
		Total assets exceed $1 billion but not $2 billion	$71,300	$82,800	$103,500	$110,400
		Total assets exceed $500 million but not $1 billion	$25,990	$28,520	$36,225	$40,250
		Total assets exceed $40 million but not $500 million	$13,340	$13,915	$14,306	$14,881

Levy class	Description	Type of levy (fixed levy or tiers)	New 2022/23 levy	New 2023/24 levy	New 2024/25 levy	New 2025/26 levy
	market services licence	Total assets do not exceed $40 million	$3,818	$3,956	$4,048	$4,186
Class 3	Registered FSPs that are licensed insurers (other than persons included in class 3A)	*No change to current tiers existing in Class 3*	*N/A*	*N/A*	*N/A*	*N/A*
Class 3A	Registered FSPs that - a. are licensed insurers; and b. in order to provide the service referred to in section 388(ca) of the Financial Markets Conduct Act 2013 (FMC Act), are required to hold, or be authorised to provide the service under, a market services licence	Annual gross premium revenue exceeds $1 billion	$776,250	$856,750	$977,500	$1,104,000
		Annual gross premium revenue exceeds $500 million but not $1 billion	$568,100	$614,100	$707,250	$759,000
		Annual gross premium revenue exceeds $250 million but not $500 million	$205,850	$224,250	$250,700	$269,100
		Annual gross premium revenue exceeds $100 million but not $250 million	$141,450	$149,500	$170,200	$181,700
		Annual gross premium revenue exceeds $50 million but not $100 million	$72,450	$75,900	$83,950	$92,000
		Annual gross premium revenue	$26,450	$27,485	$29,900	$31,050

Levy class	Description	Type of levy (fixed levy or tiers)	New 2022/23 levy	New 2023/24 levy	New 2024/25 levy	New 2025/26 levy
		exceeds $10 million but not $50 million				
		Annual gross premium revenue does not exceed $10 million	$6,946	$7,061	$7,360	$7,590
Class 16	Registered banks, Credit Unions, Building Societies	Relevant total assets exceed $10 billion	$50,600	$58,650	$57,500	$57,500
		Relevant total assets exceed $1 billion but not $10 billion	$24,150	$28,750	$27,600	$27,600
	Manager of a registered scheme (other than a restricted scheme)	Total assets exceed $10 billion	$39,100	$46,000	$44,850	$44,850
		Total assets exceed $1 billion but not $10 billion	$17,250	$20,700	$19,550	$19,550
	Licensed insurers	Annual gross premium revenue or total assets exceeds $1 billion	$6,670	$7,590	$7,360	$7,360
		Annual gross premium revenue exceeds $250 million but not $1 billion	$3,105	$3,795	$3,335	$3,335
	Listed issuers	*Not applicable*	$1,840	$2,300	$2,070	$2,070