



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Discussion paper

Financial institution licensing fees under new conduct regime

28 September 2022

Permission to reproduce



Crown Copyright ©

This work is licensed under the Creative Commons Attribution 4.0 International License. To view a copy of this license, visit <http://creativecommons.org/licenses/by/4.0/>.

Important notice

The opinions contained in this document are those of the Ministry of Business, Innovation and Employment and do not reflect official Government policy. Readers are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication. The contents of this discussion paper must not be construed as legal advice. The Ministry does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading, or reliance placed on the Ministry because of having read, any part, or all, of the information in this discussion paper or for any error, inadequacy, deficiency, flaw in or omission from the discussion paper.

ISBN 978 1 99 104183 8 (online)

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **Wednesday 26 October 2022**.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <https://www.mbie.govt.nz/have-your-say/consultation-on-regulations-under-the-cofi-act-2022-proposed-licensing-fees>. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission as a Microsoft Word document to FinancialConduct@mbie.govt.nz
- By mailing your submission to:

Financial Markets team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to FinancialConduct@mbie.govt.nz.

During the consultation period, we will be available to meet with stakeholders. If you would like to meet with us, please let us know.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process and will inform advice to Ministers. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions also remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Contents

- How to have your say 3**
 - Submissions process 3
 - Use of information 3
 - Release of information..... 4
- Glossary..... 6**
- 1 Introduction 7**
 - Purpose of this discussion paper and context 7
- 2 Financial institution licensing fees 9**
 - What are licensing fees? 9
 - What costs will the FMA incur? 9
 - Objectives..... 11
 - Proposed fees for financial institution licensing..... 11
 - Alternative options..... 15
- 3 Annex 1: Assumptions 17**

Glossary

Authorised body	An entity named on a financial institution's licence that can provide the licensed service without needing their own licence.
CoFI Act	Financial Markets (Conduct of Institutions) Amendment Act 2022
CoFI regime	New regime being introduced under the Financial Markets (Conduct of Institutions) Amendment Act 2022
Fees Regulations	Financial Markets Conduct (Fees) Regulations 2014
Financial institutions	Banks, insurers, and non-bank deposit takers
Financial institution licence	A licence issued by the Financial Markets Authority (FMA) that covers the service of 'acting as a financial institution'
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
MBIE	Ministry of Business, Innovation and Employment
NBDT	Non-bank deposit taker
Reserve Bank	Reserve Bank of New Zealand

1 Introduction

Purpose of this discussion paper and context

A new regime requires financial institutions to obtain a licence

1. The Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI Act**) received royal assent on 29 June 2022. This legislation represents a fundamental evolution of conduct regulation of the retail banking and insurance sectors in New Zealand. It introduces a conduct licensing regime for banks, insurers, and non-bank deposit takers (collectively **financial institutions**) and aims to ensure that financial institutions treat consumers fairly.
2. Under the new CoFI regime, financial institutions will be required to comply with a principle to treat consumers fairly (the **fair conduct principle**), and must establish, implement and maintain an effective fair conduct programme to ensure that they comply with the principle. Financial institutions will need to operate under a licence issued by the Financial Markets Authority (**FMA**) that covers the service of ‘acting as a financial institution’ (**financial institution licence**) in order to provide core banking and insurance products and services to consumers in New Zealand.
3. The FMA will be responsible for supervising and enforcing the new CoFI regime and for issuing financial institution licences. The legislation gives the FMA direct oversight of the general conduct of these financial institutions and provides the FMA with formal supervisory and enforcement tools to support good conduct.
4. The FMA anticipates licensing applications will open from mid-2023. The Government expects the regime to come into full force in early 2025. The FMA has recently consulted separately with industry on the proposed standard conditions to be imposed on a financial institution licence.

This paper seeks feedback on proposed financial institution licensing fees

5. The purpose of this discussion document is to seek feedback on the proposed financial institution licensing fees to apply to licence applications made under the CoFI regime. These fees are proposed to fund the costs the FMA will incur in assessing applications.
6. Other costs to the FMA resulting from development and implementation of the new CoFI regime will be funded by an increase to the FMA’s baseline funding. Large parts of this funding will be recovered through increased FMA levies payable by financial institutions, along with a contribution from the Crown. Information about the recent FMA funding and levy review can be found here: <https://www.mbie.govt.nz/business-and-employment/business/financial->

[markets-regulation/crown-entities-we-monitor/financial-markets-authority-funding/2021-funding-and-levy-review/](#). The increased funding does not cover the costs of the FMA's time assessing licence applications. Licensing fees are charged separately from and in addition to the FMA levy payable by each entity.

7. The FMA has existing responsibilities for the licensing of other market services and the fees for these licences are set out in the Financial Markets Conduct (Fees) Regulations 2014 (**Fees Regulations**). The proposed fees for the financial institution licence will be incorporated into the Fees Regulations. MBIE is the agency responsible for any amendments to the Fees Regulations.

2 Financial institution licensing fees

What are licensing fees?

8. Financial institution licences needed to offer certain banking and insurance products and services to consumers will be granted by the FMA. Obtaining a licence will be a one-off process and the licences will not have an expiry date. Licences will have standard conditions to ensure that licence holders continue to meet licensing requirements. The FMA has consulted separately on the proposed standard conditions for financial institution licences. More details on the consultation can be found here: <https://www.fma.govt.nz/news-and-resources/media-releases/fma-opens-consultation-on-standard-conditions-for-financial-institution-licences>.
9. The licensing application process will enable the FMA to assess whether the applicant is capable of effectively performing the service of acting as a financial institution. It will also provide valuable information to the FMA about individual institutions and assist the FMA to assess conduct risks and maturity at a sector level. The FMA's monitoring and supervisory approach will be directly informed by knowledge gained through the licensing process.
10. Licensing fees enable the FMA to recover the cost of staff time to consider a licence application from the applicant. Without recovering these costs from licence applicants, the FMA would be required to subsidise the cost of licensing from other revenue streams. We consider it is appropriate that these fees are charged to the financial institutions seeking a licence (as is common with licence applications) as they receive the private benefit of holding a licence by being able to operate in the regulatory environment established under the CoFI Act.

What costs will the FMA incur?

11. MBIE and the FMA currently estimate around 100 financial institutions will need to obtain a financial institution licence under the new CoFI regime.¹
12. The FMA will incur costs related to the amount of staff time required to consider a licence application. The time required to consider an application will vary depending on the complexity of the application. Steps have been taken to put triage processes in place, to assess complexity and ensure efficient use of resources, minimising costs of the licensing process. Applications will be made through an online portal and a risk assessment will be undertaken by

¹ Not all prudentially registered banks, licensed insurers and licensed NBDTs will need to obtain a financial institution licence. For example, if a bank only provides services to wholesale clients (that are not 'consumers'), the bank will not need to obtain a financial institution licence.

the system. The system will then flag any issues that need further manual consideration by staff (e.g. the need to request further documentary evidence).

13. We expect that less complex applications would likely require little manual intervention by FMA staff. The licensing system is being designed with binary questions for applicants to indicate whether they consider they meet the requirements. With less complex applications, limited documentary evidence is likely to be requested. An application will be less complex if the applicant provides all required information, the information required to be assessed by FMA is readily available, and there are limited questions or issues arising that require additional information to be sought from the applicant.
14. Circumstances that may increase the complexity of an application may include:
 - a. The applicant does not have an existing relationship with FMA as a regulated or licensed entity.
 - b. The applicant submits an incomplete application that is missing required information or documents.
 - c. The required information is not in the standard form (e.g., because information is from an overseas entity and has been prepared for an overseas jurisdiction).
 - d. Multiple questions or issues arise that require the FMA to seek additional information from the applicant (e.g., making further enquiries about whether a director satisfies the “fit and proper person” requirements, or confirm one or more key aspects of an applicant’s fair conduct programme).
 - e. Additional time is needed for internal FMA staff to peer review an application due to complex or multiple issues or if there is additional documentation that needs to be reviewed such as previous compliance information.
 - f. More complex third-party consultation is required (e.g., a need to consult with the Reserve Bank or the Commerce Commission on regulatory matters relating to the applicant).
 - g. The applicant has not engaged with the FMA prior to or during the licensing process and has not followed the application guidance provided.

Related costs of the new CoFI regime to the FMA that will not be recovered through the licensing fee

15. In addition to the staff time required to process an application, one of the main costs incurred by the FMA will be the development of the Information and Communications Technology system that will be used to process applications. The capital expenditure costs to develop this system for licensing have already been funded by the Crown and will not be recovered through the licensing fee.

16. The FMA’s baseline funding has also increased to cover costs relating to monitoring and enforcing the new regime. These new functions are funded through a mix of both Crown funding and FMA levies payable by financial institutions that will be licensed under the new CoFI conduct regime.

Objectives

17. We have identified the following objectives for setting licensing fees for financial institution licences:
- ensuring that fees are set at a level that fully recovers, but does not over-recover, the costs to the FMA of assessing applications
 - fees are fair, minimising the extent to which the fees create a cross-subsidy between different types of application (particularly between complex and less complex applications)
 - limiting uncertainty to prospective applicants as to the likely total amount of fees they will be required to pay
 - creating incentives for the FMA to deliver services to fee payers in an efficient and effective manner
 - ensuring the charging of fees is able to be undertaken in an administratively efficient manner.
18. In developing these objectives we have taken into account the Office of the Auditor-General’s *Good Practice Guide: Charging fees for public sector good and services* (<https://oag.parliament.nz/2021/fees-and-levies>) and the Treasury’s *Guidelines for Setting Charges in the Public Sector* (<https://treasury.govt.nz/sites/default/files/2017-04/settingcharges-apr17.pdf>).

1

Do you agree with these objectives for setting the financial institution licensing fees? Are there other objectives which should be considered in setting these fees?

Proposed fees for financial institution licensing

We propose a flat licensing application fee for standard applications and that an additional hourly rate may apply for more complex applications

19. As discussed above, the cost involved with processing an application will vary based on the complexity and time involved. The FMA is required to consider a wide range of factors when considering a licence application, including whether the applicant has the systems and

processes in place to ensure it is capable of effectively performing the service (and likewise for any other financial institutions authorised under its licence).

20. In line with our objectives set out above, we are proposing a licence application fee at a flat rate of \$1,024.93 for all applicants and that additional hourly fees may apply if extra time is required to process the application. This will allow the FMA to recover additional costs incurred in considering more complex applications while keeping a consistent base rate for processing standard and less complex applications.
21. The fee recommendation (set out below) has been calculated based on the estimate that a standard licence application will take approximately 5.75 hours to assess, on average. This time estimate anticipates escalation of some issues by the licensing system that require manual follow up by staff. Manual follow up could include a request for further documentary evidence from the applicant, potentially a small amount of document review (e.g., parts of or a summary of the fair conduct programme) and some additional liaison with the applicant. The FMA anticipates that the majority of applications will come within the standard assessment time of 5.75 hours.
22. Where an application is more complex, and the FMA exceeds an assessment time of 6.75 hours, the FMA may invoice the applicant for additional hours at the prescribed hourly rate of \$178.25. As with other FMA licensing fees, a small margin of 1 hour has been allowed before the hourly rate may be charged. The FMA will notify an applicant if it is likely to be charged the hourly rate and the reasons for being charged the hourly rate.
23. We note that the proposed fee will represent an additional cost to financial institutions. It is however unlikely to have a significant impact on most financial institutions, given the relatively low amount and that it will only be charged on one occasion (subject to any fees for subsequent applications to vary licences, as set out below). We note the proposed fee is lower than the fees charged for most other licensed services applications under the Financial Markets Conduct Act 2013 (**FMC Act**) (for example the fees for acting as a manager of a registered scheme or a provider of a discretionary investment management service).

Separate fees will be payable for authorised bodies and for subsequent applications to vary licences

24. We also propose that a separate fee be payable for each additional financial institution covered in the licence as an 'authorised body'.² It is likely that the time required to consider, assess and process each additional financial institution covered as an authorised body will depend on the degree of interdependence of the relevant bodies corporate of the financial institution licensee (e.g., factors such as whether they have the same directors for the

² A licence may, in its conditions, authorise 1 or more related bodies corporate of the licensee to provide a market service covered by the licence - section 400 Financial Markets Conduct Act 2013.

purposes of “fit and proper person” requirements, and operate under the same fair conduct programme).

25. On average, the FMA estimates that each authorised body assessment will take approximately 60 per cent of the time taken for a standard financial institution licence application (or approximately 3.45 hours). This is because some of the information relevant to assessing the authorised body’s suitability will already have been considered by the FMA in relation to the financial institution licensee, but additional information will need to be considered in relation to the authorised body itself. The fee for an authorised body to be considered as part of an application has therefore been set at 60 per cent of the standard fee (\$614.95).
26. Subsequent applications to vary licence conditions will be charged at the existing variation fee set out in the Fees Regulations of \$115.00 plus \$178.25 for every hour, or part-hour pro rata, of work carried out.³

We do not propose that a discount apply to multiple applications

27. The Fees Regulation make provision for a reduced licensing fee to apply where a person applies for a licence under the FMC Act at the same time, or within six months of, another different licence application. MBIE do not propose that this existing discount (that applies to some other market services licences) would apply to financial institution licences.
28. The purpose of the discount is to recognise lower costs for the FMA because information provided in the application forms part of another licence application. The FMA’s licensing system is now designed to assess applications in the first instance through an automated licensing system, leading to relatively low estimated processing times (compared to detailed staff assessment in the case of other existing FMC Act licenses to which this discount regulation applies). It is unlikely there will be lower costs for the FMA resulting from multiple applications where one or all applications are for a financial institution licence under the CoFI regime.
29. As with the fees for financial advice providers set in 2019, the proposed basic licensing fee has been calculated taking the benefits of the automated licensing system into account.

Summary of proposed fees

30. The proposals in this paper are based on the FMA’s estimate as to the relevant costs, including estimates of the number of hours involved in processing a standard licence application. The FMA will continue to refine these estimates as the licensing process is finalised to ensure the charges are set at as close as possible to actual cost recovery level. It is possible that final proposed fees will vary slightly from those set out below.

³ The FMA’s hourly rate is set in the Financial Markets Conduct (Fees) Regulations 2014 at \$178.25 per hour inclusive of GST. Fees for applications to vary licence conditions are also set in these regulations.

31. The following table summarises the proposed licensing fees:

Financial institution licensing fee (all costs inclusive of GST)		
	Basic licensing fee for all applicants (based on estimated time to assess standard application of 5.75 hours)	\$1,024.93
+	Hourly rate charges that may apply for applications where the time to assess exceeds 6.75 hours	\$178.25/hour , or part-hour pro rata, of work carried out
+	Fee for each authorised body included in the licence (based on estimated time to assess standard application of 3.45 hours)	\$614.95
+	Other variations to licence	\$115 plus \$178.25/hour , or part-hour pro rata, of work carried out

The proposed fees meet MBIE’s objectives

32. We consider that this proposal meets MBIE’s objectives for setting licensing fees because:

- a. it should allow the FMA to fully recover the anticipated staff cost of assessing financial institution licence applications
- b. the additional hourly rate above the basic licensing fee limits cross-subsidy between different applicants i.e., complex and less complex licensing applications
- c. using a flat fee combined with an hourly rate above the specified time threshold will provide certainty to most applicants, while allowing the FMA to recover additional costs incurred in assessing more complex applications
- d. it will encourage the FMA to deliver licensing services to fee payers in an efficient and effective manner, by setting the base fee at a level that appropriately recovers costs in most cases and by requiring the FMA to notify applicants and explain the reason for charging an additional hourly rate in more complex cases
- e. it is simple to administer and aligns with the approach taken to other licensing fees under the FMC Act.

2 Do you have any comments on our assessment of the proposed financial institution licensing fee as set out above?

Alternative options

33. We have considered alternative options for setting the financial institution licensing fees and these are summarised below.

Flat application fee for all financial institutions with no additional hourly rate

34. Under this option, all financial institutions would be required to pay the same flat application fee, regardless of the complexity and time taken to assess their application. There would be no additional hourly rate charged, irrespective of the amount of time it takes for FMA to assess the application.
35. MBIE does not support this option as it does not reflect the expected variation in complexity of applications. A model based solely on a flat fee would result in higher fees being charged to all applicants to ensure that the FMA was fully recovering the costs of processing complex applications. While this would provide certainty to the industry, we were concerned that this option would result in cross-subsidisation between different applicants. Applicants with less complex applications would subsidise applicants with very complex or incomplete applications. It would not be consistent with the Office of the Auditor-General's Good Practice Guide or the Treasury's Guidelines for Setting Charges in the Public Sector.
36. This option does not align with the objectives set out above and thus MBIE does not recommend this option.

Setting different licence classes

37. Under this option, different licence classes with different fees could be set for each type of financial institution (i.e., three separate licence classes for banks, insurers, and NBDTs), or based on the products or services they offer, or the size of the business.
38. There is no clear basis for distinguishing between types of financial institutions to create classes for the purposes of the licensing fee. All financial institutions need to go through the same assessment process. The ability of applicants to satisfy the licensing requirements, and the complexity of applications will vary for a range of reasons as outlined in paragraph 14 above. The size or type of financial institution is not likely to be a key determinant of costs incurred by the FMA. Based on this analysis, it would be unfair to set different fees for different types of financial institutions and would generate cross-subsidies.
39. This option is not MBIE's preferred option. It does not meet the objective of charging licensing fees in a fair manner. Under this approach, more complex applications by one kind of institution may be charged less than less complex applications by another kind of institution. This option would limit uncertainty for prospective applicants, similarly to MBIE's preferred option, but in MBIE's view would not outweigh the disadvantages involved.

Crown funding

40. As noted above at paragraph 10, we consider it is appropriate that these fees are charged to the financial institutions seeking a licence. The Office of the Auditor-General's Good Practice Guide notes that public organisations will generally charge fees where the service provides an individual or group of individuals with a direct benefit or where the service is necessary to mitigate risks presented by the activities of an individual or group of individuals. In these circumstances, financial institutions receive the private benefit of holding a licence by being able to operate in the regulatory environment established under the CoFI Act (which responds to conduct risks presented by the activities of financial institutions). These private benefits are not shared with a wider group. It is therefore more equitable to charge fees for licence applications rather than use Crown funding, as taxpayers would otherwise be funding a private benefit.
41. We note that the CoFI regime as a whole provides public benefits of increased consumer trust in financial institutions and reduced consumer harm by introducing conduct licensing requirements for banks, insurers and NBDTs. These public benefits were taken into account in the FMA funding and levy review (discussed above at paragraph 6). Unlike a fee, a levy can factor in benefits shared between groups or benefits that cannot be specifically assigned to individual groups.

3

Do you have any comments on our analysis of these alternative options? Are there other options, or variations on the above options, that should be considered?

3 Annex 1: Assumptions

Assumptions used in this paper

42. Current analysis of the total population of prudentially registered or licensed banks, insurers and NBDTs shows that if there were no authorised body applications, the FMA could expect to receive between approximately 92 and 109 licence applications. The population that falls within the scope of the CoFI regime is not fully settled and will depend, for example, on legal analysis by institutions of whether they are providing relevant services to consumers that are covered by the CoFI Act. Based on current information, we have used a mid-range value of 100 as an estimate for the total number of financial institutions that will apply for a licence (including authorised bodies).
43. As noted above at paragraph 24, some financial institutions may apply for licences that cover other related bodies corporate as “authorised bodies”. It is likely that there will only be a small group of financial institutions that are in this situation. The FMA have estimated potentially 14 entities with one or more related financial institutions that may seek to include those entities on their licence as an authorised body.
44. The FMA has estimated it will take on average 5.75 hours to assess a financial institution licence application. Within this timeframe, the FMA is assuming some manual intervention by FMA staff will take place. Multiplying 5.75 by the \$178.25 hourly rate set out in the Fees Regulations gives a total licensing fee of \$1,024.93.
45. The FMA has assumed that there may be overlap in documents provided for applications from financial institution and their authorised bodies. Therefore, a discounted rate of 60 per cent will be applied to the application fee for an authorised body application.

4 Do you have any comments on the assumptions used in this paper as outlined above?

Monitoring and evaluation

46. MBIE has ongoing regulatory stewardship obligations and will work with the FMA to monitor the effectiveness of the new CoFI regime.
47. In relation to the licence fee and other levies, MBIE will monitor the impact of the new regulatory regime on the FMA’s resourcing and the sector. MBIE will also monitor whether any significant under- or over-recovery is occurring. The licensing fees discussed in this paper will be reviewed periodically and in light of MBIE’s monitoring activities to ensure they are fit for purpose.