



## FINANCIAL SERVICES FEDERATION

6 August 2021

Financial Conduct Team  
Ministry of Business, Innovation & Employment  
By email to: [FinancialConduct@mbie.govt.nz](mailto:FinancialConduct@mbie.govt.nz)

### **Assess financial institutions upon change in control**

#### **Introduction**

1. Thank you for the opportunity to provide comments on the policy document on change in control transaction for financial institutions and for being accommodating with the timeframe and alternative ways for the Financial Services Federation (FSF) to submit on this.
2. The FSF is grateful to be given the opportunity to be part of this consultation. The voices of non-bank financial institutions are invaluable as part of the conversation on such topics to ensure that regulations are proportionate to all institutions that are covered by them.
3. The FSF refers to our previous submissions on the Financial Markets (Conduct of Financial Institutions) Bill (“COFI”) and the two recent discussion papers released by the Ministry of Business, Innovation & Employment (“MBIE”) in support of this, for background on the scope and significance of the FSF’s membership.
4. The FSF submits some more general comments on this targeted consultation before answering each question.

#### **General comments**

5. The FSF meets this consultation with concern that regulatory powers are becoming too broad, and compliance requirements for financial institutions are therefore becoming ever more burdensome and unsustainable.
6. The FSF acknowledges and agrees that controls should be placed on entities and that there should be enforcement against them when necessary to ensure that they are focused on the best interests of their customers. However, there is currently no evidence to suggest that imposing this burden is justified by the potential risks that might come from a change in control transaction. The FSF concurs with the statement

made by the Reserve Bank of New Zealand (“RBNZ”) that we should not assume that everything is designed to be adverse to policyholders<sup>1</sup>.

7. Broadening the power to assess conduct prior to a change of control transaction creates commercial uncertainty for the market and creates an additional layer of complexity and cost upon the financial services industry, an industry which is already facing an immense amount of compliance and regulatory burden. Allowing control of financial institutions to change is a very necessary component of a free and open market and are an important part of the industry. An increase in commercial uncertainty can result in increased costs and negative outcomes for New Zealand consumers, which is the reverse of the intentions of this proposed regulatory consent requirement.
8. The FSF’s overall stance on this proposed regulatory requirement is based on it being unnecessary, redundant, and costly. Existing license obligations have, and continue to, protect customers by ensuring entities are upholding market obligations. And therefore, we do not agree with this proposition.

**Question 1: Do you have any comments on the risks that can arise from a change in control on a financial institution’s conduct and culture?**

9. Although currently insurers are not regulated in relation to their overall conduct as insurers, with the incoming Financial Markets (Conduct of Financial Institutions) Amendment Bill (“COFI”) and the upcoming reforms to Credit Contracts legislation, it is hard to see whether this “legislative gap for assessing conduct” the Financial Markets Authority (“FMA”) is concerned about, actually exists.
10. The discussion document recognises that insurers wishing to undergo a change in ownership must seek the RBNZ’s satisfaction that such a change will not alter the institution’s eligibility to hold a license. Although the assessment that the RBNZ undertakes is steered towards prudential supervision, in combination with the existing Financial Markets Conduct Act 2013 (“FMCA”), and the incoming legislative reform, the argument for this “legislative gap” for conduct assessment appears to be less convincing.
11. Alongside scepticism of the existence of this “legislative gap”, the FSF is also not convinced that the Finance and Expenditure Committee has identified any potential real risk that is possible through a change in control transaction in their report. Enacting a new regulatory consent requirement based on a hypothesis of future bad behaviour by already licensed insurers, is not, in our opinion, sufficient grounds for another regulatory hurdle impacting all financial institutions.<sup>2</sup>
12. In the rare case that the hypothesis of bad behaviour by insurers is proven correct, existing licensing requirements would not be met and the FMA and the RBNZ already

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<sup>1</sup> Report of the Finance and Expenditure Committee, *Petition of Andrew Body: Protection of the interest of AMP Life’s policyholders* (April 2021) at page 9.

<sup>2</sup> “Financial institutions” as defined in Financial Markets (Conduct of Financial Institutions) Amendment Bill, s 446D.

have powers in their respective provisions which enable them to suspend, cancel or place conditions on the license of that financial institution.<sup>3 4</sup>

13. Consequently, the FSF cannot foresee any risks arising as a result of a change in control transaction. And if any do in fact arise, they are able to be appropriately mitigated with existing provisions.

**Question 2: Do you have any comments on the initial analysis for requiring financial institutions (as defined in CoFI Bill) to obtain regulatory approval from the FMA prior to any change in control?**

14. The FSF's understanding for the basis of this Discussion Document, being the Petition of Andrew Body, stems from the context of the sale of AMP's life insurance arm and the concern that the sale did not require the consent of AMP Life's 200,000 policy holders.
15. Giving enough weight to this concern to then require a new regulatory hurdle in turn concerns FSF about the potential implications and precedents that will result. The petitioner's request would give policyholders maximum influence at the point of sale despite the existing assumption that when a change of control occurs, all the rights, duties and obligations owed to the policyholders will continue as they were before the transaction occurred. Assessing a change of control and its effects would be on the basis of nothing more concrete than fears and assumptions pre-transaction. Therefore, the FSF believes that existing licensing legislation is sufficient to assess the actual impacts of the change in control and its effect on the financial institution's compliance with market obligations.
16. The initial analysis completed by MBIE in the Discussion Document also features a theme of an assumption that changes to the financial institution's operating model, governing body, institutional culture, management team or other arrangements are designed to be adverse to customers. If this theme were to translate into the drafting of the regulatory requirement, it would have serious consequences on the ability for change in control transactions thus frustrating an important aspect for the industry. The FSF also submits that no evidence exists to demonstrate to any degree of sufficiency that the lack of such a requirement causes any detriment to the customers of licensed entities.
17. The FSF concurs with MBIE's analysis that the FMA's existing expectations that FMC-licensed entities engage with the FMA in advance of any change in control is sufficient as it is. Adding a further step to an already complex process is likely to frustrate the transaction and impose unnecessary associated costs. Licensee obligations under the FMCA, Financial Market Conduct Regulations 2014, Insurance (Prudential Supervision) Act 2010 and the Non-Bank Deposit Takers Act 2013 are sufficient to mitigate any risks that come with a change in control transaction and allows broad enough powers for regulators to enforce those obligations or impose repercussions on the licensee where necessary.

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<sup>3</sup> Insurance (Prudential Supervision) Act 2010, s 143.

<sup>4</sup> Financial Markets Conduct Act, s 408.

18. The FSF notes that the initial analysis which MBIE has prepared in the Discussion Document articulates many negative connotations with respect to the implementation of this proposed regulatory requirement. It would therefore be wise for a cost benefit analysis to be conducted as part of this discussion to provide sound information to aid in the decision-making process.
19. The only benefit the FSF sees from the brief cost benefit analysis used in our interpretation of the Discussion Document, is the potential assurance to customers that a change in control will be monitored prior to its occurrence. Although this prima facie appears important, this is based on the wrongful assumption that a change in control will have negative impacts on customers in the first instance, and enforcement of market licensee obligations are not followed up with by the regulators post-transaction. Costs such as market uncertainty, frustration to the change in control system, regulatory burden and unnecessary compliance costs outweigh this potential assurance benefit.
20. As a result, the FSF's initial analysis on the proposed change in control, using a cost benefit analysis, leads us to conclude that the proposed regime is unnecessary.

**Question 3: Do you have any comments on the criteria?**

21. Objectively, the high-level principled criteria appear good. However, the FSF has concerns as to how points *b.* and *d.* will be met with the proposed new regulatory requirement.
22. As in paragraph 7 of this submission, the FSF has serious concerns that the proposed regulatory requirement will result in unnecessary regulatory burden and compliance costs and will also frustrate New Zealand's objective of free and open financial markets.
23. Expanding further on this concern, financial institutions are already facing heavy regulatory reform with the significant changes to the Credit Contract legislation, the review of the RBNZ Act, the incoming COFI legislation, Financial Services Legislation Amendment Act and, recently announced, new interim solvency standards for insurers and this is most definitely not an exhaustive list. Industries are under an immense amount of pressure to ensure their institutions are compliant with all the upcoming regulations. This additional regulatory requirement would thrust an even greater regulatory burden on an industry which is already grappling with what is currently in front of them. On this basis, the FSF is unable to support a regulation which is not proven to be of any necessity at this time.
24. On the latter concern, the FSF is in complete agreement with the RBNZ's stance on the petition, and their following comments. Such a change in regulatory settings could very well affect the ongoing provision of insurance in New Zealand and increase market uncertainty; effects which will eventually flow on to all consumers.
25. The frequency at which changes of control occur within the industry also brings the FSF to agree with the RBNZ's statement that regulators should not be obliged by regulatory

settings to continually make decisions that favour policyholders at the point of sale<sup>5</sup>. A slower process would result from the implementation of this further regulatory hurdle, which may have a chilling effect on New Zealand's objective of free and open financial markets.

26. On the basis of these further concerns, the FSF believes that, although the criteria appear reasonable on a high level, it is unlikely that the proposed regime will even meet its own criteria when considering the regulatory burden this will place on the industry and the potential frustration of important changes in control in the industry.

**Question 4: Do you have any comments on the initial views of how a conduct-focused change in control regime could be designed? Please include, where possible, any practical considerations.**

27. The FSF queries the need for the analysis in the FMCA to be completely replicated in the proposed change in control regime. An entity already holding a market license to operate will meet the requirements for this new proposed regulatory requirement by default. The need to replicate the same criteria for assessment in the pre-transaction stage is an unnecessary compliance cost.

28. Rather, it would be more effective if the FMA and RBNZ utilise their supervisory powers to ensure that market license obligations are complied with, regardless of there being a change in control transaction. As outlined in the FMA's enforcement policy, the FMA already has an existing broad range of powers which enable supervisory and enforcement tools against all relevant financial institutions.

29. The FSF's argument being that the proposed regime is unnecessary, due to the existence of licensee obligations and regulator enforcement powers, therefore the answer is that no change in control regime should be designed.

**Question 5: Do you have any comments on whether changes in corporate form, amalgamations, and transfer transactions, as they relate to licensed insurers, should also be subject to regulatory approval from the FMA?**

30. In light of the answers provided to previous questions, changes in corporate form, amalgamations and transfer transactions should not be subject to regulatory approval for reasons outlined in paragraphs 7, 15, 16 and 17.

**Question 6: Do you have any comments on whether changes in corporate form, amalgamations, and transfer transactions, as they relate to licensed insurers, should also be subject to regulatory approval from the FMA?**

31. The FSF does not support this suggestion and therefore has no further comments to make in answer to this question.

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<sup>5</sup> Report of the Finance and Expenditure Committee, *Petition of Andrew Body: Protection of the interest of AMP Life's policyholders* (April 2021) at page 8.

Please do not hesitate to contact me if you have any questions.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a vertical stroke, positioned below the closing of the letter.

Diana Yeritsyan  
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Financial Services Federation