

---

**Your “to do list” for  
the Financial Markets  
Conduct Act 2013**

---

## Background

The Financial Markets Conduct Act 2013 was enacted on 1 September 2013. While some of the preliminary provisions of the Act have already come into effect, the substantive part of the Act comes into effect on 1 December 2014. From that date, existing superannuation schemes have a two-year period within which to comply with the Act. Your scheme's chosen 'effective date' will be the date within that period that the Securities Act 1978 and the Superannuation Schemes Act 1989 ceases to apply to your scheme, and the provisions of the new Act will instead apply.

Schemes will need to change their disclosure documents, trust deeds, internal processes and governance to comply with the Act. Careful planning and time management is required to ensure that this occurs by the effective date.

### **As a restricted scheme, to be ready for the scheme's effective date:**

- Your scheme must have either an independent trustee or an independent director of a corporate trustee (both referred to as an "independent trustee" in this update). You will need to consider if you have an independent trustee and, if not, appoint one. An independent trustee has a special meaning under the Act, and excludes amongst other things anyone who is a shareholder, employee or director of a participating employer, administration manager or investment manager or an organisation that represents the interests of the members.
- The independent trustee must have been licensed to act as such by the FMA. You will need to consider whether any steps need to be carried out to satisfy the FMA's eligibility requirements and licensing conditions for this to occur. Licence applications are already being accepted by the FMA and could take several months, so we would recommend that you start this process as soon as practicable.
- A Product Disclosure Statement ("PDS"), which will replace the scheme's investment statement, must be prepared and ready to offer to new scheme applicants. The contents of the PDS will be prescribed by regulations, yet to be finalised.
- A statement of investment policy and objectives ("SIPO") must be prepared for the scheme. The Act requires the SIPO to cover various matters including the nature and types of investments that may be made and any limits on those, the methodology used for developing and updating the investment strategy and the methodology for measuring the performance of the investment strategy.
- You must upload the PDS, SIPO and other material information about the scheme onto the Register of Offers of Financial Products ("Register"), which is an online register.
- The scheme itself needs to be registered on the Register of Managed Investment Schemes.
- You will need to have reviewed and amended the scheme's trust deed and may need to obtain the FMA's consent to the amendments. For example:
  - the purpose of the scheme may need to be amended to fall within the appropriate categorisation of the scheme within the Act;
  - all fees and expenses that can be paid out of scheme property and rights to be indemnified out of scheme property must be set out in the trust deed;
  - you may also wish to expressly incorporate other provisions of the Act in your scheme's trust deed, such as those relating to members' rights to call meetings (at least 5% of members of a class can call for a meeting of that class).



- The assets of the scheme must be held by the corporate trustee or a company whose directors are only comprised of the individual trustees. You will need to consider whether a permitted entity is holding the scheme's assets and, if not, transfer custody to such an entity.
- You must give the FMA at least 20 working days' notice of your scheme's effective date.

**Compliance after the scheme's effective date:**

- The scheme should have processes in place to:
  - determine whether a transaction results in a related party benefit and, if so, whether the related party benefit is one allowed under the Act;
  - ensure that the information on the Register is updated on an ongoing basis, remains accurate and is audited annually;
  - determine whether limit breaks are materially breached;
  - ensure that new investments do not breach the 5% in-house asset rule. Broadly, this rule prevents a scheme from holding more than 5% of scheme property in investments in or loans to a related party of the scheme or a scheme participant. You will also need to consider how to manage existing investments to ensure they comply with the rule by 1 December 2017.
- Trustees should be familiar with the obligations imposed on them by the Act and be confident that they can comply with these obligations.
- Within 3 months of the scheme's effective date, the scheme must notify members of various matters prescribed by the Act, including the fact that the Act now applies to the scheme and how to obtain copies of the documents on the Register.

**Get busy**

While you have until 1 December 2016 to ensure your scheme complies with the Act, you should start thinking now about how your scheme is affected by the Act and prepare a plan and timetable to implement the required steps. We would be happy to assist you in doing so.

**10 July 2014**



**TGT LEGAL**

BARRISTERS & SOLICITORS



**Juliet Moses**  
Partner, TGT Legal

**P:** +64 9 920 8680

**E:** [juliet.moses@tgtlegal.com](mailto:juliet.moses@tgtlegal.com)



**Ruth Beaven**  
Solicitor, TGT Legal

**P:** +64 9 920 8686

**E:** [ruth.beaven@tgtlegal.com](mailto:ruth.beaven@tgtlegal.com)

This document contains general information. It is not and does not purport to be advice to the reader about the reader's circumstances. Every reader should seek specific advice about a scheme's circumstances before making any decisions concerning the matters covered by this document. Neither TGT Legal nor any of the authors of this document accept any responsibility to anyone who may rely on this document for any purposes. For further information please contact Juliet Moses on 09 9208680 or [juliet.moses@tgtlegal.com](mailto:juliet.moses@tgtlegal.com).