

Feedback form

Consultation paper: Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership or voluntary administration

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership or voluntary administration: [your organisation's name]' in the subject line. Thank you. **Submissions close at 5pm on 8 September 2021.**

Date: 8 September 2021 Number of pages: 4

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Company or entity: Insurance Council of New Zealand - Te Kāhui Inihua o Aotearoa (ICNZ)

Organisation type: Industry Association

Contact name (if different):

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Question number	Response
1. Do you agree that these are the FMC Act provisions which are relevant to this consultation? If not, please explain your reasons.	Yes we agree. For consistency and clarity, consideration should also be given to granting relief for insolvent FMC reporting entities in receivership, liquidation or voluntary administration from the requirement under s 454(1) of the FMC Act.
2. We are not proposing any relief from the requirement in section 455 of the FMC Act to keep proper accounting records, even if the reporting entity is insolvent. Do you agree with our approach? If not, please explain your reasons.	We agree with this approach. It is still appropriate that proper accounting records are kept by insolvent FMC reporting entities in receivership, liquidation or voluntary administration. In practical terms, we would expect that the on-going requirements under s 455 of the FMC Act would be maintained by the liquidator, voluntary administrator or receiver (as appropriate) while they are in control of the entity.
3. Do you have any comments on the basic problem caused by dual reporting requirements?	We agree with the summary of the practical and legal issues associated with dual FMC Act and insolvency report requirements, as set out on pages 6 to 8 of the relevant consultation paper.
4. Do you think that FMC Act financial reporting duties impose unnecessary compliance costs on an insolvent entity? Please give reasons for your answer. Please give us an estimate or range for the average compliance costs (broken down into direct and indirect costs) for your FMC reporting entity to comply annually with its FMC financial reporting duties	We agree with this statement for the reasons set out on pages 6 to 8 of the consultation paper. As an industry association with a number of FMC reporting entities as members with a variety of business structures and sizes, it is not possible for us to easily comment on this second query. We also understand that there is no easy way to identify and demarcate these costs from those associated with meeting other financial reporting requirements. In general terms, we understand the costs of complying with FMC Act reporting requirements are not immaterial. These costs are ultimately reflected in the premiums customers pay for their insurance.
5. Do you think that FMC Act financial reporting compliance costs materially reduce the returns available to investors and creditors without any significant benefit to them? Please give reasons for your answer.	Yes we agree. Amounts expended fulfilling FMC Act reporting requirements (including potentially very significant audit costs) are inappropriate and unnecessary given the state of the entity (i.e. insolvent and in liquidation, receivership or voluntary administration) and the insolvency reporting requirements in place, and would materially reduce funds that otherwise would be available to creditors and investors.
6. Do you think the financial reporting regimes under the Companies Act and Receiverships Act for the various forms of external administration provide sufficient	Yes we agree. While insolvency reporting requirements are different and not as comprehensive as FMC Act reporting requirements in some respects, they are the

transparency and information for existing investors and creditors? Please give reasons for your answer.	most appropriate in the relevant circumstances, as detailed on pages 4 to 7 of the consultation paper.
7. Do you agree with our assessment of the four other significant problems? Please give reasons for your answer.	Yes we agree for the reasons set out on pages 6 and 7 of the consultation paper.
8. Please estimate or comment on the additional costs which may be incurred by the auditor where they are prepared to sign off on an audit of an involved entity, so they can get assurance that the financial statements provide a true and fair view, given the entity is insolvent.	We endorse comments made on pages 6 and 7 of the consultation paper in this regard.
9. Do you agree with our assessment of these other problems? If you do not agree, please explain your reasons.	We agree with this assessment.
10. Do you think there are any other problems we need to consider? If so, please outline them.	Not that we are aware of.
11. Do you think there are any other current or emerging issues we should take into account as part of our process for considering the introduction of relief?	Not that we are aware of.
12. Do you agree that compliance with the financial reporting duties by an entity under external administration imposes unnecessary compliance costs? If not, why not? Are there any other factors that we should consider?	<p>For an insolvent entity in liquidation, receivership or voluntary administration, we agree that the requirement to comply with reporting requirements under the FMC Act, in addition to applicable insolvency reporting requirements, would constitute unnecessary compliance costs.</p> <p>We are not aware of any other factors that should be considered in this regard.</p>
13. Do you have any comments on our harm assessment?	<p>We endorse the comments made on page 10 of the consultation paper about the 'harm' caused when an insolvent entity in liquidation, voluntary administration or receivership also has to comply with reporting requirements under the FMC Act.</p> <p>For completeness, we note that it is unclear from the consultation paper what the total number of FMC Act reporting entities in receivership or voluntary administration in the relevant reporting periods are (that is, as opposed to those who fail to satisfy FMC Act reporting requirements). This information may be useful to fully assess the scale of the problem.</p>
14. Do you have any comments on the rationale for our preferred option?	<p>We support the rationale for the proposed relief from FMC Act reporting requirements as outlined on page 11 of the consultation paper. We agree that doing so would further the purposes under the FMC Act of avoiding unnecessary compliance costs and promoting flexibility in financial markets.</p> <p>In terms of the parameters of the proposed relief (i.e. the preferred option described on pages 10 and 11 of the consultation paper):</p> <ul style="list-style-type: none"> • We reiterate our response to question 1 above regarding also granting relief from requirements under s 454(1) of the FMC Act. • In respect of the second clause of the preferred option (related to entities in receivership or voluntary administration), instead of an arbitrary 12-month deferment period with the option to apply for an extension on a case-by-case basis, consideration should be given to the deferral period matching the period when the insolvent entity is in receivership or voluntary administration (when applicable insolvency reporting requirements apply). This approach: <ul style="list-style-type: none"> (1) reflects that an entity may be in receivership or voluntary administration for longer or shorter than 12-months (2) enables the exemption to more flexibly and accurately reflect:

	<p>(a) the specific period the entity is in an insolvent state</p> <p>(b) the unnecessary compliance burden sought to be avoided in this respect, and</p> <p>(c) the value of FMC Act reporting requirements being met when control is returned to directors and insolvency reporting requirements no longer apply.¹</p> <p>Conversely, if during an insolvent entity's voluntary administration or receivership, the decision is made to place it in liquidation (and subsequently wound-up), we envisage the treatment as proposed under clause 1 of the preferred option would apply (i.e. FMC Act reporting requirements would be cancelled). While this proposal would not align with the approach adopted or proposed in Australia, neither may the preferred option proposed.</p> <ul style="list-style-type: none"> • Consideration should be given to the appropriate treatment when the insolvent entity is in receivership and liquidation at the same time. In these circumstances we expect it would be appropriate for the proposed treatment under clause 1 of the preferred option to apply.
15. Are there large or complex insolvencies where this rationale should not apply? If so, please provide an explanation.	No comment.
16. What do you think of these other options for relief?	We prefer the preferred option described in the consultation paper with consideration given to the refinements proposed above (see response to question 14).
17. Do you have any comments on the scope of our proposed relief for entities in liquidation?	We are supportive of the scope of the proposed relief and rationale save that consideration should be given to the refinements proposed above (see response to question 14).
18. Do you agree that we should allow a deferral relief period of up to 12 months? If not, why not?	As outlined in response to question 14 above, rather than adopt an arbitrary 12-month deferral of FMC Act reporting requirements, consideration should be given to the deferral period matching the period that the insolvent entity is in receivership or voluntary administration. See the response to question 14 for more detail.
19. In what circumstances do you consider it is not appropriate for us to extend the 12-month deferral period for an externally administered entity?	<p>Please see the response to question 18.</p> <p>Without resiling from that position, if the 12-month deferral period was to be progressed, we agree that it would be appropriate for this to be further extended if the 12-month period had expired and the insolvent entity continues to be in receivership or voluntary administration.</p>
20. What do you think of our proposals in respect of the situation where financial statements are overdue for filing at the time of appointment of an external administrator? Do you agree that we should deal with these situations on a case-by-case basis, and that directors should not be relieved of their obligations if they have not acted reasonably?	We agree with these proposals.
21. Do you think the exemption and deferral relief should be confined to entities which are incorporated in New Zealand and subject to New Zealand insolvency laws? If not, why not? If you consider relief should be extended to entities which are incorporated	<p>We agree that the proposed relief should be confined to entities that are incorporated in New Zealand and subject to New Zealand insolvency laws.</p> <p>In addition to the reasons outlined on page 14 of the consultation paper, this approach:</p>

¹ Under this approach the insolvent entity would report on their next balance date after the deferral period expires. For example, if an entity had a 31 March balance date, was placed in receivership on 10 February 2021 and control was returned to directors on 1 October 2021, 31 March 2022 would be the next balance date that was reported on. If there was insufficient time between the expiry of the deferral period and the reporting date to prepare the required reporting, the relevant entity should be able to apply for an extension.

<p>in another overseas jurisdiction, please provide detailed information about the insolvency regime in that jurisdiction and its reporting requirements.</p>	<ul style="list-style-type: none"> ensures that appropriate reporting is available to relevant investors, creditors and other stakeholders, noting that overseas insolvency reporting requirements vary, may not be equivalent to New Zealand insolvency reporting requirements (including not having the same regard to New Zealand creditors, investors and other stakeholders' interests), and is consistent with the purpose under the FMC Act to promote confident and informed participation of businesses, investors and consumers in financial markets.
<p>22. Do you agree that we should include provisions relating to the early end of an external administration, where the entity is returned to the control of the directors? Are there any other situations you consider should bring about an early end to the exemption relief or the deferral period?</p>	<p>We agree that the class exemption should include a condition stipulating that the relief ends if the liquidation is terminated and control returned to directors.</p> <p>In respect of the deferral relief for entities in receivership or voluntary administration, as outlined above, we consider that a better approach is for the deferral period to match the period the entity is in receivership or voluntary administration. Without resiling from that position, in the event that the 12-month deferral period relief was to be progressed, we would support the approach proposed.</p>
<p>23. Do you have any other comments on the proposed conditions?</p>	<p>We would not support a condition stipulating that the relief only applies to the extent that it is not reasonably practical for directors to comply with their FMC Act reporting obligations. As outlined on page 6 and 7 of the consultation paper, there are clear legal and practical reasons why these reporting requirements cannot be reliably be complied with when an insolvent entity is in liquidation, receivership or voluntary administration.</p>
<p>24. Are there any other conditions you consider we should include?</p>	<p>Not that we are aware of.</p>
<p>25. Do you have any other comments on the factors we have listed? Are there any other factors you consider we should include on the list?</p>	<p>For the reasons stated in response to question 23. above, we query whether 'the availability and willingness of the directors to assist in complying with the FMC Act' would be an appropriate consideration.</p> <p>We are not aware of any other factors that should be listed. In considering whether to grant relief on a case-by-case basis, it will be important for the FMA to take a flexible and risk-based approach and not be constrained to any prescribed list of factors, acknowledging that valid circumstances for relief may arise which were not earlier anticipated.</p>
<p>Feedback summary – if you wish to highlight anything in particular</p>	
<p>Thank you for the opportunity to be consulted on this matter. We commend the FMA for investigating this issue and proposing that relief from FMC Act reporting requirements be granted to insolvent FMC entities in liquidation, receivership or voluntary administration with the view to, amongst other things, removing duplicate reporting requirements and unnecessary compliance costs.</p> <p>For completeness, it is highly unlikely that ICNZ's members, as well capitalised licensed general insurers subject to robust prudential supervision by the Reserve Bank of New Zealand, would be put in such a situation where they would need to rely upon such relief. That said, we see the benefits of these proposals out of an abundance of caution and in light of the broad range of other financial service entities also subject to such FMC Act reporting requirements.</p>	
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<p>Thank you for your feedback – we appreciate your time and input.</p>	