

Legal alert - Insights from FMA's first Annual Report under new regime

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On 2 October 2015 the Financial Markets Authority (FMA) released its first annual report under the fully implemented Financial Markets Conduct Act (FMCA), describing it as marking a "turning point" for the FMA and New Zealand's financial markets.

The report reflects a change in the FMA's focus and priorities. With the post-GFC finance company cases now all but completed, the FMA is looking to the future and pressing on with its 'top-of-the-cliff' regulatory approach.

In particular, it has begun implementing the FMCA which took effect in December 2014. Many businesses and professionals now subject to the FMCA were previously unregulated, or subject to much lighter regulation. The FMA is aware of the need to mitigate this burden wherever possible. As a result, it is consulting heavily with the financial and business sectors to fine-tune the application of FMCA regulations and prepare key sectors for licencing. As Chairman Murray Jack says, "*the FMA is maturing into a substantive conduct regulator, with a clear picture of its work over the medium term*".

What do the numbers say? The FMA's KPIs have largely improved. Most notably, 65% of investors are now "very or fairly confident" in New Zealand financial markets - an increase of 4% on the previous year.

In particular, the Annual Report lists the FMA's achievements over the last year as including:

- Growing capital markets:
 - overseeing the first debt and equity offers using new statutory provisions that make it easier and cheaper for firms to make same-class offers. Listed companies have raised \$1.2 billion under these provisions
 - issuing licences to six new crowd-funders and two peer-to-peer lenders. \$12.5 million has been raised through these platforms.
- Improving frontline regulation and co-operation:
 - overseeing the launch of NXT, a stepping-stone to the NZX Main Board for small to mid-sized firms
 - signing a MoU with NZX to improve the NZX's frontline regulatory systems.

Other achievements during the previous year were summarised in the FMA's *Investigations and Enforcement - Key Themes 1 July 2014 - 30 June 2015* report summarised in [Buddle Findlay's regulatory and investigations September 2015 update](#). These included \$51.14 million being secured to compensate investors and \$1.71 million was awarded in penalties and fines.

The main complaints received by the FMA in 2015 were:

- Alleged fraud or scams: 29% (including 20% forex trading)
- Withholding client money: 19% (including 16% forex trading)
- Financial advice: 11% (including 4% advisors, 2% banks and 1% fund managers)
- Other: 41% (including 10% forex trading).

Hot on the agenda for 2015-2016 will be the IMF's review of New Zealand's financial services regulatory system (last conducted in 2004), and the government's five-year review of the regulation of financial advisers and the Financial Service Providers Register.

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