

## Financial Markets Authority announces the continuation and expansion of exemptions for small co-operatives, industrial and provident societies and irrigation companies

The Financial Markets Conduct (Small Co-operatives) Exemption Notice 2022 (**Co-op Exemption Notice**) allows for co-operative companies and industrial and provident societies to be exempt from certain requirements in the Financial Markets Conduct Act 2013 (**Act**) where:

- investors will pay no more than \$10,000 in total for offers of co-operative shares or certain equity securities (**Equity Threshold**); or
- the relevant entity had revenue of \$5 million or less in the relevant accounting period (**Revenue Threshold**).

This is an increase from the previous thresholds of \$5,000 and \$2 million (respectively) that were included in the prior version of the Co-op Exemption Notice.

The requirements that small co-operatives and industrial and provident societies are exempt from if they do not exceed the Equity Threshold include:

- Part 3 of the Act, being the requirement to issue a Product Disclosure Statement (**PDS**) (where disclosure would otherwise be required), although a simplified "offer document" is still required (that contains the information set out in Schedule 1 of the Small Co-op Exemption Notice (i.e. a 2 to 5-page document));
- Subpart 4 of Part 3 of the Act, which relates to ongoing disclosure obligations and the updating of registers for share issues or the offering of financial products;
- Section 218 of the Act and Regulation 108 of the Financial Markets Conduct Regulations 2014 (**Regulations**), which relate to the audit and review of registers; and

- Section 227 of the Act, which requires the issuer/offeree to retain documents for 7 years in relation to issues and offers of financial products.

Small Co-operatives and industrial and provident societies that do not exceed either the Equity Threshold or the Revenue Threshold are also exempt from Part 7 of the Act, which relates to the preparation and audit of financial statements (provided that a prominent warning statement is included at the front of every document that contains financial information).

The exemption from Part 7 of the Act is useful for thinly capitalised co-operatives where the member's total investment in shares is less than \$10,000. However, any small Co-op looking to raise significant amounts of capital from its members for capital expenditure may find this limit frustrating. At the end of the day, a \$10,000 investment is a very small figure. To give context, the average sheep farmer's holding in a meat processing company will be in the tens of thousands (not that those companies are the target of the Co-op Exemption Notice). The \$5 million Revenue Threshold is arguably much more likely to be relevant (in the context of an exemption from Part 7 of the Act), particularly for start-up Co-ops. A Co-op or industrial and provident society only has to be under one of the two limits for the exemption from Part 7 of the Act to apply. However, the other exemptions within the Co-op Exemption Notice are specific to the Equity Threshold and a Co-op or industrial and provident society cannot rely on the other exemptions if it exceeds the Equity Threshold, even if it is under the Revenue Threshold. For example, a small Co-op that exceeds the Equity Threshold won't be able to rely on the PDS exemption.

Irrigation companies are also exempt from certain requirements in the Act pursuant to the Financial Markets Conduct (Irrigation Companies) Exemption Notice 2022 (**Irrigation Exemption Notice**). The Irrigation Exemption Notice applies to irrigation companies that are not co-operatives, but meet certain co-operative principles.

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## Small co-op and irrigation company exemption notices (Continued)

These principles are defined as supplying or providing goods or services, or both, to shareholders, supplying rights (other than returns to shareholders), and entering into any other commercial transaction with shareholders.

The Irrigation Exemption Notice provides that a PDS of an irrigation company is exempt from clauses 5, 12 and 20 of Schedule 3 of the Regulations. The clauses relate to the key information summary, key risks and specified shares held by directors and senior managers. The exemptions are not significant in terms of a drafting and cost perspective in the context of a PDS.

Irrigation companies are also exempt from clauses 38 and 35(1)(b)-(d) of Schedule 3 of the Regulations. These regulations relate to key information metrics such as EBITDA, profit and dividends that would ordinarily need to be included in a PDS (because other financial measures such as earnings and distributions are more appropriate). The above relates to irrigation companies generally, regardless of their size.

In addition, small irrigation companies are also exempt from the following provisions of the Act if they do not exceed the Equity Threshold:

- Part 3 of the Act, being the requirement to issue a PDS (where disclosure would otherwise be required), although a simplified "offer document" is still required (that contains the information set out in Schedule 2 of the Irrigation Exemption Notice (i.e. a 2 to 5-page document));
- Section 218 of the Act and Regulation 108, which relate to the audit and review of registers;
- Section 227 of the Act, which requires the issuer/offeree to retain documents for 7 years in relation to issues and offers of financial products; and
- Subpart 4 of Part 3 of the Act, which relates to ongoing disclosure obligations and the updating of registers for issues or offer of financial products.

Irrigation companies that are under either the Equity Threshold or the Revenue Threshold are also exempt from Part 7 of the Act, which relates to the preparation and audit of financial statements (provided that a prominent warning statement is included at the front of every document that contains financial information) about the entity.

The Small Co-op Exemption Notice came into force on 22 December 2022 and the Irrigation Exemption Notice (together, the **Exemption Notices**) came into force on 1 January 2023. The Exemption Notices will be revoked on 22 December 2027.

In conclusion, despite the increases, the Exemption Notices still have limited applicability. Capital raising for start-up Co-ops, industrial and provident societies and irrigation companies is made easier with the ability to make simplified disclosure. However, the Equity Threshold is still very low and therefore limits the applicability of the Exemption Notices, although there may be some opportunity to minimise audit and accounting costs.

### Want to know more?

If you have any questions about FMCA exemptions, please contact our specialist [commercial team](#) or [David Goodman](#), [Reuben Adams-Cook](#) or [Peter Sangster](#).