MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Engaging individuals through 'interposed persons' to give financial advice

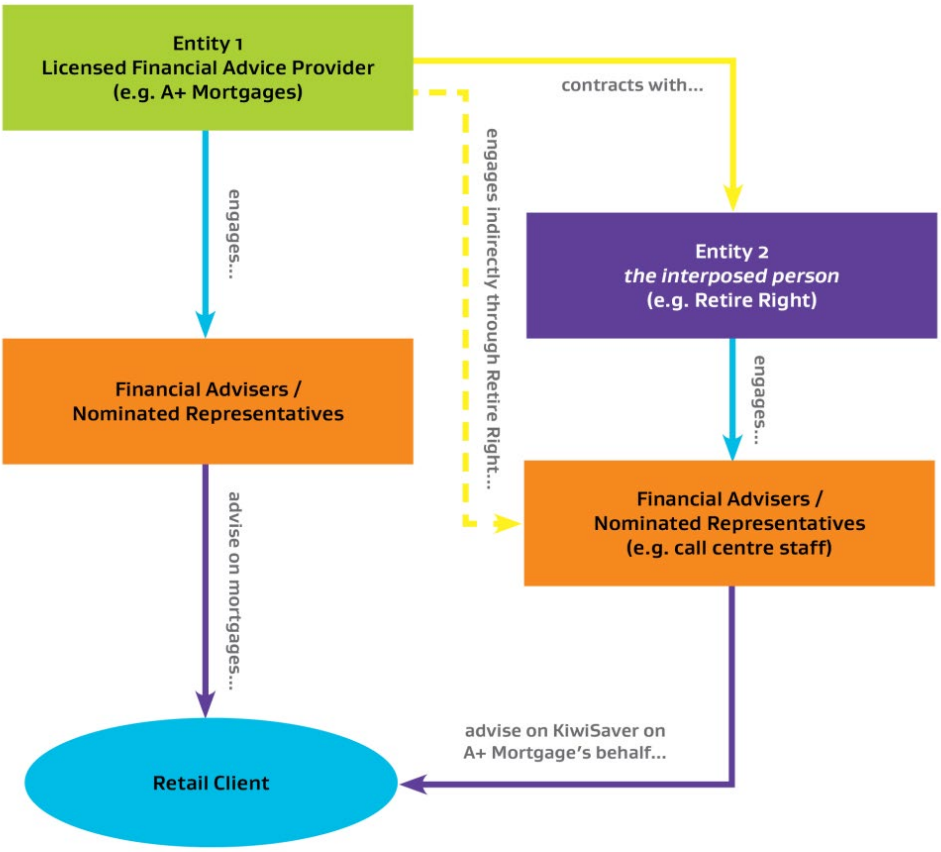
Background

Under the new financial advice regime, anyone giving financial advice to retail clients needs to be engaged by a licensed financial advice provider[1]. A licensed financial advice provider can give advice:

- through individual financial advisers or nominated representatives engaged *directly* by the provider; and/or
- through individual financial advisers or nominated representatives engaged *indirectly* through one or more other entities (those entities being 'interposed persons'); and/or
- through an entity or entities engaged by the provider.

What is an interposed person arrangement?

This is an arrangement where a financial advice provider engages individuals (financial advisers and/or nominated representatives) *indirectly* through one or more other entities (the 'interposed persons') to give advice on its behalf. This is illustrated in the fictional example provided below.



[1] Refer new subpart 5A of Part 6 after section 431 of the Financial Markets Conduct Act 2013 (FMC Act), as set out in section 29 of the Financial Services Legislation Amendment Act 2019 (the Amendment Act).

In the above example, A+ Mortgages primarily provides mortgage advice to its clients. Sometimes its clients also request advice on KiwiSaver. A+ Mortgages contracts with Retire Right (the 'interposed person') for financial advisers or nominated representatives in Retire Right's call centre to provide financial advice about KiwiSaver to A+ Mortgage's customers on A+ Mortgages' behalf.

The above example is an interposed person arrangement because:

- the client is a client of one entity (A+ Mortgages), which is a licensed financial advice provider; and
- that entity contracts with another entity (Retire Right) who is the interposed person to engage individuals to give advice to the first entity's client/s.

Note: this is different to a financial advice provider referring a client to another provider for a different type of financial advice, because the advice here is being given on behalf of the first financial advice provider.

Why does the regime deal specifically with interposed persons?

Changes were made by the Select Committee to the Financial Services Legislation Amendment Bill to deal with interposed persons. When the Bill was introduced it was theoretically possible for a company to engage another company to give advice on its behalf, without being caught by the regime. The duties and liabilities of interposed persons were also unclear. This is discussed in item 3.32 on page 33 of MBIE's Departmental Report. The changes made by the Select Committee (outlined under the next question) addressed this.

How does the regime regulate interposed persons?

An entity can only do the following if authorised by a licence condition:

- engage another entity to give advice on its behalf; and/or
- engage individual advisers or nominated representatives through a second entity (the 'interposed person').

The licence condition may require this other entity be registered and/or licensed by the Financial Markets Authority (FMA), as an authorised body or in its own right[2]. Both entities could be liable for contraventions of the duty provisions[3].

Those who have a pre-existing arrangement with another entity[4] can engage individuals through interposed persons under their transitional licence if the other entity will have their own financial advice provider licence or will be an authorised body under a licence. The FMA will provide guidance on applying for full licences closer to the opening date of 29 June 2020.

When is an arrangement not interposed?

An arrangement is not interposed where individual financial advisers and/or nominated representatives are engaged directly, i.e. as employees or contractors.

[2] refer amended section 403 of the FMC Act, as set out in section 24 of the Amendment Act.
[3] refer new section 431H of the FMC Act, as set out in section 29 of the Amendment Act.
[4] as at April 2019 when clause 76 of new part 6 of schedule 4 of the FMC Act came into force.

There may be arrangements where an advice firm receives compliance support, advertising and/or referrals from another entity. These arrangements are not necessarily interposed person arrangements, except where advisers or nominated representatives of one entity are engaged to give advice to another entity's financial advice clients on that other entity's behalf.

What to consider when contemplating interposed persons arrangements?

It may be worth considering whether engaging an individual directly is feasible, as this would avoid the need for potentially complicated interposed person arrangements.

For example, some financial advice providers (e.g. A+ Mortgages) may be considering engaging individual advisers (e.g. Susan) who also have their own limited liability companies (e.g. Susan's Advice Limited). There might not be an interposed persons arrangement if the provider (A+ Mortgages) engages the individual (Susan) directly as an employee or contractor.

How to find out more?

You can find out more information relevant to your specific circumstances by contacting the FMA to discuss your proposed licence application and by seeking independent legal advice. We also recommend reading our factsheet on liability in the new financial advice regime.

If you have any questions about the new financial advice regime you can contact MBIE at faareview@mbie.govt.nz and the FMA at questions@fma.govt.nz .