



KiwiSaver Amendment Regulations (No 2) 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 24th day of September 2012

Present:

The Right Hon John Key presiding in Council

Pursuant to section 228(1)(bb) and (2) of the KiwiSaver Act 2006, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the KiwiSaver Amendment Regulations (No 2) 2012.

2 Commencement

These regulations come into force on 1 November 2012.

3 Principal regulations

These regulations amend the KiwiSaver Regulations 2006 (the **principal regulations**).

4 New regulation 32 and cross-heading inserted

After regulation 31, insert:

“Implied term as to no external financial advantages

“32 Implied term as to no external financial advantages

“(1) The following clause is an implied term of the trust deed of every KiwiSaver scheme and overrides any express terms of the trust deed to the contrary.

“ “ No external financial advantages

“(1) The trustees (in the case of a restricted KiwiSaver scheme) or the manager (in the case of any other KiwiSaver scheme) must ensure that the entire value, benefit, or other return derived in respect of the member’s accumulation is credited to the member’s accumulation and is not received as an external financial advantage.

“(2) In this clause, an **external financial advantage**—

“(a) means any direct or indirect financial advantage payable to or derived by the member or any associated person of the member (within the meaning of subpart YB of the Income Tax Act 2007); and

“(b) includes the value of a reduction or an avoidance of a financial liability (such as a financial advantage obtained by using any part of the member’s accumulation to offset, or to reduce the interest payable on, a loan); and

“(c) to avoid doubt, excludes permitted withdrawals.

- “(3) This clause does not prevent minor financial advantages that are incidental or secondary to a KiwiSaver scheme membership from being provided to or in respect of a member, including such advantages in the form of—
- “(a) an inducement or incentive or other form of reward to contribute to, or be a member of, the KiwiSaver scheme; or
 - “(b) a reduction or rebate of the fees or commission payable to a financial adviser, or for financial adviser services, that takes into account the member’s accumulation; or
 - “(c) rewards such as discounts on fees payable in respect of non-KiwiSaver services or products.’
- “(2) Subclause (1) applies whether or not the trust deed for a KiwiSaver scheme was entered into before the date on which this regulation comes into force.”

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 November 2012, prescribe a provision to be implied in the trust deed of all KiwiSaver schemes. The provision imposes a duty on the trustees or the manager of the KiwiSaver scheme (as the case may be) to ensure that the value attributable to a member’s KiwiSaver accumulation is credited to the member’s KiwiSaver account and not received as an external financial advantage.

The purpose of the regulations is to ensure that contributions, and the investment returns that would normally arise on those contributions, remain locked in until withdrawal in accordance with the KiwiSaver Act 2006, and that the benefits payable to members of KiwiSaver schemes at the end of the lock-in are not adversely affected by pre-re-

irement financial advantages that result from KiwiSaver contributions, but that are not credited to the members' KiwiSaver accounts. The regulations will prevent arrangements such as nil-return investment policies for KiwiSaver schemes that are linked to external financial advantages, such as mortgage off-set.

Issued under the authority of the Acts and Regulations Publication Act 1989.

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These regulations are administered by the Ministry of Business, Innovation, and Employment.
