

Guidance Note

Related party agreements

Purpose of this guidance note

This guidance note provides advice to community housing providers (CHPs) that propose to enter into a related party agreement.

What is a related party?

Essentially, a related party is a person or organisation that has significant influence over the CHP. The definition of an associated person or related body corporate that is set out in section 12 of the Financial Markets Conduct Act 2013 (**attached**) provides a good indication of the sorts of relationship that would make a person or entity a related party.

What is a related party agreement?

Related party agreements are any legally binding agreements between related parties. Some CHPs have transactions involving the transfer of resources, services or obligations with related parties. The agreements governing these transactions are related party agreements.

Why is the Authority interested in related party agreements?

Over the time it has been in existence, the Authority has come across several CHP related party agreements that had the potential to put the CHP's registration at risk. Some agreements have altered the governance arrangements of the CHP from those that were approved at the time of registration. Other agreements have had the potential to undermine the long-term financial viability of the CHP, putting it in breach of the Financial Viability Performance Standard.

Examples of related party agreements that may affect the ongoing financial viability or

the governance of a CHP would include agreements that:

- cede aspects of the CHP's governance to a related party that is undertaking part of the housing operation; or
- contain provisions for a related party to undertake financial expenditure on behalf of the CHP, with no direct oversight by the CHP.

The Authority's expectations with regard to related party agreements

Significant related party agreements should go before the CHP's Board, be reported in the Board minutes and require Board approval to proceed. The Authority would expect that a related party agreement that is likely to put the CHP in breach of the Performance Standards would not receive Board approval.

To ensure you are safely within the Performance Standard, we encourage CHPs to seek the Authority's view on significant related party agreements before providing them to the Board for signoff.

The Authority should be advised of significant related party agreements via the Change and Disclosure reporting process and during annual monitoring.

While there is no requirement for a CHP to obtain the Authority's permission before signing a related party agreement, seeking the Authority's advice will ensure there are no concerns regarding compliance with the Performance Standards as a result of the changes made by the agreement.

Further information

If you have any concerns or questions related to disclosure of related party agreements, please contact us at CHRA@hud.govt.nz.

Financial Markets Conduct Act 2013

12. Meaning of associated person and related body corporate

(1) In this Act, a person (A) is **associated** with, or an **associated person** of, another person (B) if—

- (a) A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of the body corporate (or vice versa):
- (b) A and B are relatives or related bodies corporate:
- (c) A and B are partners to whom the Partnership Act 1908 applies:
- (d) A is a director or senior manager of B (or vice versa):
- (e) A and B are acting jointly or in concert:
- (f) A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa):
- (g) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa):
- (h) A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons:
- (i) there is another person with which A and B are both associated.

(2) In this Act, a body corporate (A) is related to another body corporate (B) if—

- (a) B is A's holding company or subsidiary within the meaning of section 5 of the Companies Act 1993; or

- (b) more than half of A's voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or
- (c) more than half of the voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- (d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or
- (e) there is another body corporate to which A and B are both related.