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The logo features a green apple with a white stem and leaf. The word "in" is written in white lowercase letters inside the apple's body.

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Preparing contracts: FAPs, suppliers & clients

David Greenslade - Strategi Group

Tim Williams – Chapman Tripp

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Re-cap of Previous Session

- Discover your FAP and adviser obligations on the first day of the new advice regime
- Your legal duties on day 1
- Level 5 qualification and transition period
- Record keeping and internal complaints
- Available to watch again on [Financial Services Council NZ YouTube Channel](#), or on FSC [website](#).

Agenda

- Why are contracts important
- FAP-product manufacturer contract
- FAP- contractor financial adviser agreement
- FAP- employee financial adviser agreement
- FAP-authorized body agreement
- Outsource provider agreements
- Client agreements

Why are contracts important

- Legal requirement
- Licence requirement- Outsource provider standard condition
- Provides the structure and control for the FAP
- Handy when things go wrong
- Implied and express contracts- get contracts sorted before start date

FAP- Manufacturer agreement

- Closely read the agreements you have or will sign
- Build manufacturer obligations into your agreements
- Have controls to meet manufacturer compliance & reporting obligations
- Know what triggers termination of remuneration

FAP-contractor agreement

- Test if relationship is really contractor or employee

<https://www.employment.govt.nz/starting-employment/who-is-an-employee/difference-between-a-self-employed-contractor-and-an-employee/>

- Contractor- individual, company
- Contractor obligations to FAP
- Services & support provided by FAP
- Client ownership
- Payment to FAP and revenue flows
- Could be engaged by licensed FAP or unlicensed FAP- whose obligations are followed
- Other terms similar to AB agreement

FAP-employee adviser agreement

- Use updated employment agreement
- Redraft position profile and KPIs <https://eab.business.govt.nz/employmentagreementbuilder/startscreen/>
- Issues similar contractor agreement

FAP-authorised body

- Relationship between the parties
- Client ownership
- Approval mechanism for the AB
- Degree of control of FAP over financial advisers in the AB
- Services & support provided by the FAP to the AB
- AB obligations: General and in respect of AB advisers
- Marketing arrangements

FAP-authorised body (continued)

- Payments to AB and remuneration flows
- Termination events
- Record keeping and security- what IT solution is being used
- Intellectual property and information ownership
- Indemnity and insurance
- Assignment or sale of business by AB
- Restraint on AB

Outsource provider agreements

- FMA requires minimum terms- see proposed standard conditions
- Nature & scope of activity (definition of outsource provider)
- Defined roles, responsibilities & obligations
- Duration
- Service levels and performance requirements
- Reporting and monitoring and non-performance actions
- FMA & others access to records
- Security, BCP, compliance, privacy, etc

Client agreements

- Draft in plain English- it must be understandable
- Make sure obligations of both parties is very clear
- Unfair contract terms
- Disclaimers of liability not overly effective
- Don't forget the legal bits

Summary

1. The right agreements need to be in place to obtain FAP full licence-FMA will check
2. Need to be enforceable
3. Have in place before new regime commences and before joining a FAP

Next Steps

Homework

- Review your existing contracts
- Seek professional advice

Contact details

- David Greenslade: david.greenslade@strategi.co.nz
- Tim Williams: tim.Williams@chapmantripp.com

Next Webinar

- Compliance with Financial Advisers Act between now and 15 March 2021
- 10 July 2020, 10am
- Registration details will be sent via FSC emails. Contact fsc@fsc.org.nz to subscribe