



Financial Advisers Bill

(192—1)

Second interim report of the Finance and
Expenditure Committee

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Financial Advisers Bill

Recommendation

The Finance and Expenditure Committee is considering the Financial Advisers Bill, particularly the proposed application of the bill and the institutional arrangements for supervision of financial advisers, and recommends that the House take note of its second interim report.

Background

The Financial Advisers Bill seeks to regulate the activities of financial advisers to ensure that they are competent, skilled, and accountable for financial advice provided to consumers. We called twice for submissions on this bill, with the second call being made to allow further submissions to be made on proposals to amend the definition of “financial adviser” and to change the regulatory model outlined in the bill as introduced (as outlined in our first interim report on the bill).

Purpose

We have now received and considered submissions on these proposals. The majority of submissions give qualified support to the proposal to narrow the application of the bill. Concerns are still being expressed about the proposal to provide regulatory oversight by the Securities Commission rather than through industry-led approved professional bodies. Most submitters have asked for a further opportunity to provide comment on the amendments we may recommend to the bill.

Key considerations

We are considering recommending amendments to narrow the application of the bill by ensuring the focus is on financial products, rather than financial decisions or occupations.

We are also considering recommending amendments to establish two levels of financial advisory services, each of which would impose a different level of obligation. Category one services would need to be authorised by the Securities Commission and would include advice on complex securities or investment broking and savings or investment planning. Category two services would not require advisers to be authorised, but advisers would be required to comply with the basic disclosure and conduct requirements of the bill. Category two services would include advice on credit, general insurance or simple securities (such as bank term deposits or call accounts). We are also considering whether the Securities Commission should be empowered to certify institutions who meet the standards under the bill. Certified institutions would be held responsible for financial advice offered by their staff on simple products.

We are considering whether it would be of benefit to create a Commissioner of Financial Advisers, who would be a member of the Securities Commission. The Commissioner of Financial Advisers would be responsible for ongoing monitoring and disciplinary proceedings for the professional conduct of financial advisers.

We intend to invite submitters to comment on the changes we are considering. Further details of the proposed changes are included as an appendix to this report.

Appendix A

Committee procedure

The committee called for public submissions on the bill. The closing date for submissions on the bill was 4 April 2008 and 16 May 2008 for submissions on the proposed changes to the bill.

Committee members

Charles Chauvel (Chairperson)
Hon Bill English
Jeanette Fitzsimons
Craig Foss
Hon Mark Gosche
Hone Harawira
Rodney Hide
Moana Mackey
Dr the Hon Lockwood Smith (Deputy Chairperson)
Hon Paul Swain
Chris Tremain
Judy Turner
R Doug Woolerton

Appendix B

Key matters under consideration

Application of the bill

We are considering a number of changes to narrow the application of the bill. In particular, we are considering recommending that the reference to “implications of a financial decision” in the bill as introduced be removed, and that “financial advice” be defined with reference to “financial products”. This redefinition of “financial advice” is intended to allow the bill to utilise existing definitions of “financial products” and provide certainty about the coverage of the bill.

We are considering whether advice relating to the acquisition or disposal of any financial product should be caught within the ambit of the bill. We are considering amending the bill to clarify that a “financial product” could include debt, equity, credit, and risk products, as well as investment in real property.

Authorised Financial Advisers—a tiered approach

We are considering recommending the adoption of a tiered approach to the regulation of financial advisers. This would comprise two levels of financial advisory services being established in the bill, each of which would impose a different level of obligation. Category 1 Advisory Services would include advice on complex securities or investment and savings planning, and any individual providing a Category 1 Advisory Service must be authorised. Category 2 Advisory Services would include advice on credit, general insurance or simple securities, such as bank term deposits or call accounts, and individuals would not need to be authorised to provide these services. However, these advisers would be required to comply with the basic disclosure and conduct requirements of the bill.

We are considering making some recommendations about how authorised financial advisers will be required to seek authorisation from the Securities Commission. We are considering whether, to gain authorisation from the commission, a financial adviser should be required to meet relevant competency levels, meet fit and proper person requirements, and be registered under the Financial Service Providers (Registration and Dispute Resolution) Bill.

Under the changes we are considering, anyone who is authorised would be required to comply with any ongoing disclosure and conduct requirements specified in regulations, and the terms and conditions of their authorisation. This proposed approach is intended to enable a distinction to be made between advice that carries significant risks for consumers and advice that carries minimal risks, thus allowing for a more tailored regulatory response for different types of advice.

Certified finance institutions

We are considering the adoption of a Certified Finance Institution model. The fundamental principle underlying certification of institutions is that the institution is responsible for

ensuring that advice tendered by its employees (and agents) is appropriate to the needs that the advice is serving. This model may be used by a range of institutions, including banks, insurance companies, credit unions and other financial institutions.

Under this model, any institution would be able to apply to the commission to become a certified financial institution. In order to become certified, an institution would need to meet certain requirements, such as demonstrating to the commission that it has the appropriate processes in place to ensure that any employees or agents covered by its certification are suitable for the roles they are undertaking, and behave in a manner that is consistent with the principles of the Act. The institution would also need to be registered under the Financial Service Providers (Registration and Dispute Resolution) Bill.

The certification of an institution would enable an institution to meet the obligations of all financial advisers affiliated with that institution, and would allow an institution to standardise compliance for advisers affiliated with that institution. Under the proposals we are considering authorised financial advisers would still need to meet their individual obligations.

This approach would include tiered disclosure obligations for the different categories of financial advisers. We are considering recommending an amendment to ensure that the bill includes a general obligation to make disclosure, as well as obligations relating to the form and accuracy of disclosure, and removing the specific disclosure obligations but providing that regulations might be made that specify disclosure obligations applying to different categories of people.

Central supervision

We are considering whether it would be beneficial to recommend the establishment of a Commissioner of Financial Advisers. The commissioner would be part of the Securities Commission. Except for investigations and the enforcement of breaches of statutory obligations (criminal breaches), all functions of the Securities Commission under the bill would be exercised by the commissioner. This approach is intended to help ensure that the Securities Commission can act as both the statutory enforcer and the professional regulator.

The commissioner's role would include responsibility for establishing a code of conduct and undertaking disciplinary proceedings for breaches of that code of conduct. To assist with the commissioner's decision-making, the commissioner could be required to establish and act with a Rule-Making Committee and a Disciplinary Committee. This would ensure that the commissioner receives advice from the industry when exercising his or her judgement.