



PARLIAMENTARY LIBRARY

Te Pātaka Rangahau a Te Whare Pāremata

# BILLS DIGEST

Digest No. 1600

## Financial Service Providers (Registration and Dispute Resolution) Bill 2007

<b>Date of Introduction:</b>	04 December 2007
<b>Portfolio:</b>	Commerce
<b>Select Committee:</b>	Finance and Expenditure.
<b>Published: 05 February 2008</b> Prepared by <b>John McSoriley</b> BA LL.B, Barrister  Legislative Analyst  P: (04) 471-9626 (Ext. 9626)  F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.  Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

### Purpose

The aim of the Bill is to set up a system for the registration and other regulation of financial service providers.

### Background

#### The need for the Bill

"The Bill sets up a registration system for financial service providers that will:

- identify financial service providers;
- allow more effective monitoring and evaluation of financial service providers;
- provide easy access to information about financial service providers;
- assist in meeting New Zealand's anti-money-laundering obligations under the Financial Action Task Force (FATF)<sup>1</sup> Recommendations;

<sup>1</sup> The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and

- ensure that the controlling owners, directors, and senior managers of financial service providers do not have certain criminal convictions, are not bankrupt, and are not the subject of a management ban under companies, securities, or consumer legislation"<sup>2</sup>.

### **Minister's speech - First Reading<sup>3</sup>**

The Minister of Commerce, Hon Lianne Dalziel, in moving that the Bill be read a first time, said that the intention of the Bill was to set up a registration system for financial service providers, and to establish a requirement that they all belong to an industry-based approved dispute resolution system, to improve consumer access to redress in the financial sector.

It was the second bill arising from the Review of Financial Products and Providers; the first of these bills was an amendment to the Reserve Bank of New Zealand Act (the Reserve Bank of New Zealand Amendment Bill (No 3) 2007: [Bills Digest No 1583](#)).

The Minister said that the new registration system would identify for the first time all entities providing financial services in the New Zealand market and that this would assist all relevant regulatory authorities to both monitor and enforce the law, and enable sectoral data to be collected.

The Minister also said that the establishment of such a register would also enable New Zealand to meet specific anti - money-laundering obligations under the Financial Action Task Force, or FATF. She said that the Bill covered a wide range of entities, including banks, building societies, credit unions, managed funds, securities issuers, money transfer services, finance companies, credit providers, foreign currency exchanges, and insurers ("The definitions are intended to be as broad as they can possibly be").

The register would be operated by the Companies Office. The Registrar of Financial Service Providers would undertake enforcement functions in relation to breaches of the registration requirements, and would have the power to share information with the Securities Commission, the Reserve Bank of New Zealand, and other prescribed agencies that carry out supervisory and enforcement functions relating to money-laundering or terrorist financing—for example, the police. The Bill would also establish access to a comprehensive, industry-based dispute resolution system to improve consumer access to redress in the financial sector.

The Minister said that membership of an approved dispute resolution scheme would be mandatory for financial service providers that transact with consumers. She said that consumers in this context included small to medium sized enterprises

### **The Financial Advisers Bill 2007**

The Bill is related to the Financial Advisers Bill described in Bills Digest 1599. This Bills Digest should be read together with [Bills Digest 1599](#).

#### *Comment*

The separation of these bills adds a degree of complexity to their interpretation.

## **Main Provisions**

---

### **Who does this Bill apply to?**

---

terrorist financing. The FATF is therefore a "policy-making body" created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. [http://www.fatf-gafi.org/pages/0,2987,en\\_32250379\\_32235720\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html)

<sup>2</sup> Financial Service Providers (Registration and Dispute Resolution) Bill, 2007 No 190-1, Explanatory note, General policy statement, p. 1.

<sup>3</sup> [Financial Service Providers \(Registration and Dispute Resolution\) Bill — First Reading debate](#), New Zealand Parliamentary Debates (Hansard), 2007, Volume: 644, Page: 14001.

The Bill applies to people who are in the business of providing a "financial service" or a "financial adviser service". However, it does not apply to any of the following people:

- a lawyer in the course of that person's professional practice as a lawyer;
- a chartered accountant in the course of that person's professional practice as a chartered accountant;
- a prescribed Crown agency;
- an employee of the above persons;
- an employee of a financial service provider.

Also, the Bill does not apply with respect to financial services provided between related companies (*Part 1, Clause 6*).

#### **What is a "financial adviser service"?**

A "financial adviser service" has the meaning given by Section 5 of the Financial Advisers Bill 2007 and is either or both of:

- "the giving of financial advice in the course of business"; or
- the receipt, handling, payment, or investment of money or other property in the course of business if that receipt, handling, payment, or investment is connected to, the result of, or performed in anticipation of, a financial decision (*Part 1, Clause 4; definition of "financial adviser service"; the Financial Advisers Bill 2007, Part 1, Clause 5, definition of "financial adviser service"*).

#### **What is a "financial service"?**

The Bill provides that "financial service" means any of the following financial services which is not provided " ... in the context of a financial adviser service":

- accepting deposits;
- keeping, investing, administering, or managing money or securities on behalf of other persons;
- lending money or securities and providing credit (for example, under a credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003);
- providing financial leases, except under a contract that is not a consumer credit contract under section 15 of the Credit Contracts and Consumer Finance Act 2003;
- operating a money or value transfer service;
- issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money);
- giving financial guarantees;
- participating in securities issues as any of the following:
  - an issuer, a contributory mortgage broker, a trustee, a unit trustee, a superannuation trustee, a statutory supervisor, a promoter, or a manager within the meaning of those terms in section 2(1) of the Securities Act 1978,
  - a public issuer within the meaning of that term in section 2(1) of the Securities Markets Act 1988,
  - a provider of lending facilities;

- changing foreign currency;
- entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and commodity futures on behalf of another person;
- providing forward foreign exchange contracts;
- managing individual or collective investment portfolios;
- underwriting and placing insurance;
- providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations or other similar international obligations (*Part 1, Clause 4, definition of "financial service"; Clause 5 ("Meaning of financial service")*).

### **Prohibitions**

The Bill provides that no person may provide a "financial service" or a "licensed service" (i.e. " ... a financial service that is required by an enactment to be provided only by a licensed provider") or may hold out that they are entitled to provide a financial service unless they are registered under this Bill. A breach of each of these prohibitions is an offence. Breaches, in the case of an individual, carry a penalty of imprisonment for a term not exceeding two years or a fine not exceeding \$100,000 (or both); and, in the case of a body corporate, a fine not exceeding \$300,000 (*Part 2, Subpart 1, Clauses 10 and 11*).

### **Registration of financial service provider**

The Bill sets out the qualifications and requirements for registration as a financial service provider. Methods of, and reasons for, deregistration are also provided for (*Part 2, Subpart 2, Clauses 12 - 20*).

### **Register of financial service providers and financial advisers**

The Bill provides that the Registrar must establish, maintain, operate and provide access to a register. The register may be kept electronically, or in any other manner that the Registrar thinks fit. The information that the register must contain about each registered person is specified. Provision is made for public access to the register (*Part 2, Subpart 4, Clauses 23 - 35*).

### **Registrar's inspection powers**

The Bill provides that the Registrar, or a person authorised by the Registrar, may require the production of documents and inspect and take copies of those documents for the purpose of ascertaining whether a person is providing, or has offered to provide, a financial service (*Part 2, Subpart 5, Clauses 36 - 38*).

### **Dispute resolution schemes and the reserve scheme**

The Bill provides that every financial service provider must be a member of an approved dispute resolution scheme if the provider provides a financial service to consumers who are natural persons or to businesses that have no more than 19 full-time-equivalent employees. However, this requirement only applies if there is a reserve scheme. The reserve scheme is an approved dispute resolution scheme that has been appointed by Order in Council. The Bill sets out in detail how a dispute resolution scheme may be approved. Regulations may be made to impose a levy to fund the reserve scheme (*Part 3, Clauses 43 - 70*).

**Copyright: © NZ Parliamentary Library, 2008**

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.

