

Financial services news alert

February 2010

Financial Services Providers (Pre-Implementation Adjustments) Bill

The Financial Services Providers (Pre-Implementation Adjustments) Bill (**Bill**) passed its first reading in Parliament last night. The Bill makes technical, but important, amendments to the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008. More background and a copy of the bill digest are available [here](#) and Simon Power's speech to the House yesterday can be seen [here](#).

Key changes to the Financial Advisers Act

According to Mr Power's speech and press release today, the focus of the amendments is on "necessary and desirable" changes to the qualifying financial entity (**QFE**) model. The key changes for QFEs include:

- requiring a QFE to name individual contractors whose advice it will take responsibility for, instead of automatically being responsible for advice from all its contractors,
- allowing a QFE's employees and named contractors to provide financial adviser services on the QFE's category 1 products (complex products such as shares), without being individually licensed (currently permitted only for the QFE's employees), and
- permitting the employees and named contractors to provide financial adviser services for products for which the QFE is a promoter under the Securities Act (currently, the Financial Advisers Act allows this only if the QFE is the issuer of the product).

The Bill also provides for a new exemption for advice that forms part of, or is connected with, ratings given by rating agencies that have been approved under the Reserve Bank of New Zealand Act 1989 or under insurance legislation (Part 1, Clause 8, amending Section 12 of the Act).

Further areas for discussion/changes to come

In his speech to the House, Mr Power also responded to other issues which have been raised by industry but which are not addressed in the Bill:

- in respect of entities (rather than individuals) being able to provide certain kinds of financial advice:
"The cornerstone of the legislation is that the professionalism of financial advice is best encouraged by ensuring it is delivered by competent and ethical individuals. While it may be appropriate that changes be made to improve business efficiencies such changes must be consistent with this fundamental principle."
- in respect of advisers to wholesale clients:
"My view is that all financial advisers should be broadly inside the framework but this may be achieved through other avenues. Those discussions continue on. Both Acts already contain a number of mechanisms that can be used to ensure that the obligations imposed on wholesale advisers are not out of proportion to the benefits of regulation, including the option of tailored disclosure obligations, separate standards of client care through the Code of Professional Conduct and the recognition of entities as QFEs. The Committee may want to consider whether these obligations are sufficient."

- in respect of “investment transactions”:

“... [T]he current framework established by the Act leads to an impractical outcome whereby only natural persons can make investment transactions but not companies and other entities. This will create significant compliance costs for businesses without creating much benefit for the public and I intend to write to the Select Committee with additional proposed amendments to the Acts to ensure that that situation is rectified at the time the Committee is dealing with this Bill. Although I’m still in the process of preparing my proposal, it is likely to reflect the following features: it will allow both entities and natural persons to make investment transactions; it would be a registration-based regime that leverages off the existing frameworks set up by the Financial Service Providers Act and Financial Advisers Act; it will maintain the minimum money-handling standards set up by the Financial Advisers Act and of course the Securities Commission will be the enforcer of that regime. Most importantly, in designing this framework, I want to ensure that the level of oversight is proportionate to the risk posed by the relevant transactions.”

He did not address, however, industry’s concern over the breadth of the definition of a “financial planning service”, that is, whether it should extend to the most basic needs analysis.

Changes to the Financial Service Providers (Registration and Dispute Resolution) Act

The Bill confirms that nominated representatives of a QFE and employers who provide services for their employees to enable them to join certain superannuation or KiwiSaver schemes are not financial service providers, and also clarifies the territorial scope of the legislation.

Timing

The Bill has been referred to the Commerce Committee and the Committee is to report finally to the House before 4 May 2010. We understand that the intention is still to bring both Acts into effect in December 2010 with a subsequent period for confirmation of QFE status and authorisation of individual advisers to follow at the start of 2011.

What do I need to do?

The Select Committee process is likely to be the last opportunity to influence the shape of the core Financial Advisers legislation, particularly around those areas flagged above. If you would like our assistance in making submissions on the Bill, please contact your usual Minter Ellison Rudd Watts lawyer, or any of the contacts below.

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