

In Confidence

OFFICE OF THE MINISTER
OF COMMERCE

The Chair

Cabinet Economic Growth and Infrastructure Committee

Auditor Regulations 2012

Proposal

- 1 This paper proposes regulations under the Auditor Regulation Act 2011 to allow for its implementation.

Executive Summary

- 2 The Auditor Regulation Act (the "Act") requires auditors of issuers,¹ and the audit firms of which they are members, to meet minimum standards and be registered. Under the Act:
 - a. Accredited professional bodies, including the New Zealand Institute of Chartered Accountants ("NZICA") will license New Zealand-based auditors and audit firms;
 - b. The Financial Markets Authority (the "FMA") will set minimum standards, license overseas auditors and audit firms, and approve and supervise accredited professional bodies;² and
 - c. The Registrar of Companies (the "Registrar") will operate the public register of licensed auditors and audit firms.
- 3 In the transition to the new regime, existing auditors of issuers and their firms receive an interim licence for up to two years, subject to complying with certain conditions and providing their details to the Registrar. During that time, the auditors and audit firms must apply to the FMA or an accredited professional body for a full licence.
- 4 Regulations are required to implement certain aspects of the new regime, including:
 - a. The details existing auditors of issuers and their firms must give to the Registrar to confirm their interim registration;
 - b. The fees and charges of the FMA and the Registrar; and
 - c. The jurisdictions from which overseas auditors and audit firms can come.

¹ Issuers encompass all those who raise money by way of investments from the public and all those who hold money from the public on deposit or hold assets on trust for broad groups of people. They include banks, insurance companies, finance companies, listed companies and KiwiSaver providers.

² The Act makes NZICA an accredited professional body but subjects it to the FMA's monitoring and control.

In Confidence

- 5 The Act provides for regulations to address these and other issues. I therefore propose that regulations prescribe:
 - a. The information, in addition to that required by the Act, to be held on the register of auditors and audit firms;
 - b. Registration requirements for documents;
 - c. Circumstances in which the Registrar may withhold access to the register;
 - d. Conditions that the FMA may impose on accredited bodies;
 - e. Information which accredited bodies must supply to the FMA in their annual reports;
 - f. Overseas jurisdictions recognised for the purposes of the Act;
 - g. Fees the FMA may charge to process applications and conduct quality reviews;
 - h. The Registrar's fees for initial registration and annual renewal.
- 6 Submissions from regulators were invited on the proposals, and these have been incorporated into the recommendations.
- 7 Industry professional bodies have been informed of the proposals. No significant objections have been expressed.

Background

- 8 The Auditor Regulation Act received its Royal Assent on the 19th of May 2011.
- 9 Prior to the passage of the Act, auditors were not regulated as a specialist profession, but were subject to self-regulation as accountants. This approach did not adequately reflect the specialised skills, knowledge and experience that auditors need to have.
- 10 Problems with this approach became evident in relation to finance company failures. Company receivers advised the Registrar of Companies (the "Registrar") that some audits of failed finance companies were not carried out to the required standards. This appeared to suggest that some finance companies carried on business for longer than they ought. Consequently, audit failure was identified as a contributing factor in the size of investor losses.
- 11 The Act promotes quality, expertise and integrity in an important segment of the audit profession by establishing independent oversight of the auditors of issuers, and the audit firms of which they are members, and ensuring that they meet minimum standards and are registered. Responsibility for the regime is divided between the FMA and accredited professional bodies (including NZICA). The FMA sets the minimum standards with which auditors and their firms must comply, as well as appointing the accredited bodies (aside from NZICA) and supervising them, and licensing overseas auditors and audit firms. The accredited professional bodies license New Zealand-based auditors and audit firms.

In Confidence

- 12 The minimum standards set by the FMA will prescribe the qualifications, competence and experience that an auditor will need to meet before that person can be licensed to undertake audits of issuers. Those standards will also include the conditions that may be imposed on licences and details of on-going competence assessment and continuing professional development. Similarly, the FMA can set standards for the systems, policies and procedures of audit firms to promote compliance with the Act and the use of appropriate care, diligence and skill in conducting audits. It will also set standards for accredited professional bodies. In the case of auditors and audit firms, the FMA can prescribe standards that apply during the transition to the new regime.
- 13 The FMA will publish the minimum standards in a *Gazette* notice. Each notice must be laid before Parliament for the purposes of the Regulations (Disallowance) Act 1989, which allows Parliament to disallow or amend regulations or any provisions of regulation. It is expected that the FMA will publish its first set of minimum standards on 1 April 2012.
- 14 The FMA's other main task is to appoint and supervise accredited professional bodies. Under the Act, NZICA is automatically appointed as an accredited professional body, although it is still subject to supervision by the FMA. Before appointing any other accredited professional bodies, the FMA must be satisfied that they will implement and maintain an effective audit regulatory system, that they meet the minimum standards prescribed by the FMA, and that they are fit and proper persons. In its supervisory role, the FMA has the power to cancel or suspend the accreditation of a professional body, or censure it.
- 15 Accredited professional bodies license and supervise New Zealand-based auditors of issuers and the firms of which they are members. Before issuing an auditor licence, the accredited professional body must be satisfied that the auditor meets the FMA's minimum standards and is a fit and proper person. Any licence granted can be subject to conditions and can be granted for up to five years. During the duration of the licence, the auditor must also comply with continuing competency requirements. The accredited professional bodies also licence audit firms where one or more members of the firm are licensed auditors and the firm meets the FMA's minimum standards. As with individual auditors, the licence of an audit firm can be subject to conditions.
- 16 One of the features of the Act is that it allows auditors and audit firms from approved overseas jurisdictions to undertake audits of New Zealand issuers. The FMA acts as the accredited professional body for overseas auditors and audit firms. It is proposed that regulations will set out the approved jurisdictions.
- 17 The Act requires that a public register of licensed auditors and audit firms is maintained by the Registrar of Companies (the "Registrar"). The register will be one of several business registries operated by the Companies Office, part of the Business Services Branch of the Ministry of Economic Development. Like those registers, the auditors' register will be fully electronic, meaning that all information submitted for registration must be supplied in electronic form and that access to the register is through a website.

In Confidence

- 18 The Registrar will not interact directly with auditors and audit firms,³ but will publish the information provided by accredited professional bodies and the FMA. In order to ensure that the register contains up-to-date information, the Act requires that the FMA and accredited professional bodies must, in the case of certain prescribed information, inform the Registrar within 10 working days of discovering that the information has changed or is incorrect.
- 19 Existing auditors of issuers and the firms of which they are members have two years from the commencement of the Act to obtain a licence from the FMA or an accredited professional body. Until they obtain a licence those auditors will have a transitional licence, so long as they provide details about themselves and their practice to the Registrar and satisfy the transitional requirements notified by the FMA as part of their minimum standards. Regulations will prescribe the details that must be provided on the register.
- 20 Section 84 of the Act provides that the Governor General may, by Order in Council, make regulations to prescribe certain aspects of the new regime, including:
- a. Information and documents required for licensing and registration, their format and how they are to be supplied;
 - b. Information appearing on the register;
 - c. Licence changes that accredited bodies and the FMA must notify to the Registrar, or that overseas auditors and firms must notify to the FMA;
 - d. Fees and charges of the FMA and Registrar;
 - e. The acceptable jurisdictions for overseas auditors;
 - f. Information included in the annual report of each accredited body; and
 - g. Conditions the FMA may impose when approving an accredited professional body.
- 21 The transitional regime anticipated by the Act will commence from 1 May 2012. All sections of the Act not already in force will come fully into effect on 1 July 2012.

Comment

- 22 In order to give the Act full effect, I propose the following regulations:

Content of the register

- 23 Section 41 of the Act sets out the minimum information which must be included on the register. Such details currently include the applicant's name and business address.
- 24 I propose that the register for the licensed auditor and audit firm should also include details of the home jurisdiction of each auditor and audit firm. The home jurisdiction is that country, state or territory in which the auditor ordinarily resides or in which the audit firm is based, and in which that auditor or firm is entitled to operate. This information will allow users of the register to know if a particular auditor or audit firm is regulated in an overseas jurisdiction.
- 25 I further propose that the register entry for each licensed auditor should include details of the audit firm that they work for (if any). This will allow for cross-referencing between the listings of audit firms, and those of individual auditors.

³ Except during the transitional implementation phase prior to the Act coming fully into effect.

In Confidence

Transitional licensing and registration of auditors and audit firms

- 26 Part 3 Subpart 3 of the Act provides that subject to certain conditions, auditors and audit firms that have acted in respect of an issuer audit in the two years prior to the Act coming into force shall be considered to meet transitional licensing and registration requirements.
- 27 There is a requirement that a person must provide prescribed information to the Registrar.
- 28 I propose that the following information must be provided by any auditor or audit firm to confirm their transitional status:
- a. In respect of an individual auditor:
 - i. The full name and business address (both physical and electronic) of the licensed auditor;
 - ii. The home jurisdiction of the licensed auditor;
 - iii. Information identifying an issuer audit within the preceding two years that the applicant acted as the auditor or engagement partner on;
 - iv. In the case of a New Zealand auditor, evidence of their current membership of NZICA as a chartered accountant; and
 - v. In the case of an overseas auditor, evidence of current membership of one of the professional bodies specified in the Gazette and compliance with the other requirements of the FMA's transitional minimum standards, and compliance with other requirements to act as an auditor in that jurisdiction.
 - b. In respect of an audit firm:
 - i. The full name and business address (both physical and electronic) of the firm;
 - ii. The full names of all of the partners and employees of the firm that are licensed auditors;
 - iii. A signed certificate confirming that they have systems which comply with the External Review Board's⁴ Professional and Ethical Standard 3 concerning quality control;
 - iv. Details of their professional indemnity insurance or a copy of their policy; and
 - v. Information identifying a recent issuer audit the applicant acted as the auditor on.
- 29 This information mirrors the information that will be included on the register for auditors that have received licences from the FMA or an accredited professional body. It also contains information to confirm the eligibility of the auditor or audit firm for registration. During the transitional period, licensing will occur on a "good faith" basis. That is, the Companies Office will not check the *bona fides* of the information submitted, as it does not possess the relevant technical expertise to do so and it would introduce significant additional costs. The FMA and the accredited professional bodies have the appropriate skills to verify the information submitted by applicants during the full licensing process.

⁴ The External Reporting Board is an independent Crown entity responsible for developing and issuing accounting and audit standards in New Zealand.

In Confidence

Notifying changes to registered information

- 30 Section 42 of the Act requires that certain changes or corrections to information held on the register must be notified to the Registrar.
- 31 I propose the following prescribed changes in the Regulations which are required to be notified to the Registrar within 10 working days after the accredited body or the FMA first becomes aware of the change.
- 32 In respect of an individual:
- a. Change in the conditions placed on a licence;
 - b. Change in the kinds of issuer audits which may be performed;
 - c. Suspension or cancellation of a licence that has been issued to the licensed auditor or any other action that has been taken on a disciplinary matter against the licensed auditor by an accredited body, a disciplinary body, or the FMA;
 - d. Change in the audit firm that a licensed auditor works for;
 - e. Change in the name and business address of the auditor.
- 33 In respect of a firm:
- a. Change in the conditions placed on the registration that are currently in force
 - b. Change in the name and business address of the audit firm

Access to the register

- 34 Section 39 of the Act provides that the Registrar may withhold access to the register in certain situations. I propose that the Registrar should be able to refuse access to the register:
- a. To undertake maintenance work; or
 - b. Where there are technical difficulties, such as unforeseen equipment failures ; or
 - c. To ensure the security or integrity of the register.
- 35 This will enable the Registrar to respond to unforeseen events or to efforts to undermine the security of the register or the integrity of information kept on it, such as efforts to “hack” into the register website.

Requirements with which information or documents provided to the Registrar must comply

- 36 Section 45 of the Act provides that the Registrar may refuse to accept a document for registration if it is not in the prescribed form.
- 37 I propose that all documents and information provided to the Registrar for the purposes of registration are supplied electronically through the register website, or such other means as the Registrar shall direct.
- 38 This will improve the operational efficiency of the register and help reduce the costs to auditors of registration. During the transitional period, auditors and audit firms will access the service directly. Once the Act comes fully into force, all information included on the register will be supplied by the FMA and accredited professional bodies.

In Confidence

Overseas jurisdictions

- 39 Section 6 of the Act defines an ‘overseas auditor’ as “a person who is entitled to act as an auditor in a country, state or territory outside New Zealand that is prescribed for the purpose of this definition”.
- 40 I propose that the jurisdictions below should be approved for the purpose of the Act. This will allow auditors from those countries to seek a licence to undertake audits of New Zealand issuers. Those jurisdictions are:
- a. Australia;
 - b. The European Union;⁵
 - c. Hong Kong;
 - d. Singapore; and
 - e. The United States.
- 41 Overseas auditors can only act for New Zealand issuers where they meet the FMA’s minimum standards and the on-going competence and review requirements of their home jurisdiction are at least as good as those of New Zealand. The FMA has reviewed the regulatory systems of overseas jurisdictions likely to supply audit services to New Zealand issues, and is satisfied that the jurisdictions above meet those requirements.

Changes which overseas auditors must notify to the Financial Markets Authority

- 42 Section 13 of the Act requires that every overseas auditor must give written notice to the FMA of any relevant changes to their circumstances within 10 working days of first becoming aware of the change.
- 43 I propose that the following matters be prescribed as relevant changes which are required to be notified to Registrar within a period of 10 days:
- i. Change in the name and business address of the auditor.
 - ii. Changes to any limitations on the overseas auditor's ability to act in respect of an audit that are imposed by or in relation to any certificate, registration, licence, or other authorisation that entitles the overseas auditor to act as an auditor in a country, state, or territory outside New Zealand
 - iii. Change in the audit firm that a licensed auditor works for.
- 44 This is to ensure that the FMA is able to fulfil its statutory obligation under section 16 of the Act to have regard to limitations on the abilities of auditors to act in respect of any particular audit. This is also necessary to ensure the FMA can fulfil its obligations under section 42 of the Act to notify the Registrar of changes to certain information published on the register.

⁵ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland , France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain , Sweden, and the United Kingdom

In Confidence

Registrar of Companies fees

- 45 Section 38 of the Act requires the Registrar to establish and maintain a register of registered audit firms and licensed auditors. In order to recoup the costs associated with the operation of the register, the Registrar intends to charge fees for:
- Applications by auditors and audit firms to be registered; and
 - The filing of annual confirmations.
- 46 Sections 11, 12 and 43 of the Act anticipate that the proposed fees may be collected by the FMA and accredited bodies on behalf of the Registrar.
- 47 In return for these fees, the Registrar will provide the register with an online search facility, where those people in the business of providing issuer audits can be searched and identified.
- 48 I propose that the following fees (including GST) will be payable:

Initial application fees:	
Application for registration fee	\$350
On-going fees:	
Annual confirmation fee	\$110

- 49 The fees have been calculated on the basis that they should be no more than is necessary to recover the costs incurred by the Registrar in providing services to auditors and audit firms.
- 50 Government registration fees are expected to be a small component of the total cost of implementing the regime. Some examples of the other compliance costs for auditors and audit firms include the cost of joining an accredited body, the cost of an auditors levy to pay for FMA regulatory functions, and the cost of quality review assessments conducted by the FMA or its delegated representatives.
- 51 It is important to note that accredited bodies are likely to pass on to auditors and audit firms any costs they incur in the discharge of their regulatory responsibilities under the Act. The nature of such fees are not yet known.

Financial Markets Authority fees

- 52 Section 84 of the Auditor Regulation Act 2011 provides the authority for regulations to set charges for aspects of the FMA's new functions in relation to auditors.

In Confidence

- 53 I propose fees to cover the cost to the FMA of the following functions:
- Conducting quality reviews of practices⁶;
 - Processing applications for licences by overseas auditors;
 - Applications for registration by overseas auditing firms; and
 - Applications by professional accounting bodies to become accredited.
- 54 I propose applying the following GST inclusive application fees and hourly rates for processing applications by overseas auditors for licences, applications by overseas auditing firms for registration, and applications to become accredited professional accounting bodies:

A fee of \$115 for an application; and	
A fee calculated at the following hourly rates in respect of an application:	
For work carried out by a member of the FMA	An hourly rate of \$230
For work carried out by an officer or employee of the FMA qualified in accountancy, business, commerce, economics, or law, or who is appropriately qualified by reason of skills, training, or experience,	An hourly rate of \$166.62
The costs incurred by the FMA in processing the application, including; obtaining expert advice or assistance.	At cost

- 55 The above fees are consistent with those for applications to the FMA under the Securities (Fees) Regulations 1998 and the Financial Advisers (Fees) Regulations 2010⁷.
- 56 I propose the same application and hourly rates for the FMA when conducting quality reviews of practices. The total average cost of a quality review for a practice is expected to be approximately \$40,000 and must occur once in a four year period.
- 57 To enable the FMA to make arrangements to delegate the conducting of quality reviews on its behalf, I propose adding a specific provision to include the costs incurred by the FMA in processing the application, including; obtaining expert advice or assistance; and the reasonable costs of engaging an accredited body or any other suitably qualified person to carry out the quality review.

Relationship of Auditor Fees with fees and levies to fund the Financial Markets Authority

⁶ Section 65 of the Auditor Regulation act 2011 requires the FMA to ensure that regular quality reviews are carried out.

⁷ The amounts noted here are slightly higher than the amounts in the Securities (Fees) Regulations 1998 on which these rates are based. The higher rates reflect the increase in GST from 12.5% to 15%. The fees in the pre-October 2010 regulations were deemed to increase by the amount of the GST increase through the operation of provisions in the Goods and Services Tax Act 1985.

In Confidence

- 58 It is important to consider the fees proposed under the Act in the context of the wider compliance frameworks which are being developed in parallel, and which will impact on auditors.
- 59 In addition to the specific fees for Crown agency services under the Auditor Regulation Act, there is also a FMA levy on licensed auditors which they will have to pay annually to contribute to funding the FMA's general powers, functions and duties under the Financial Markets Authority Act 2011. The FMA levy is expected to take effect from 2 April 2012 and will be reviewed in 2014. The levy is currently being progressed separately along with other Crown agency fees, and is intended to be promulgated by 1 April 2012.

Financial Advisers (Fees) Regulations

- 60 In the process of determining the appropriate fee payable to the FMA for auditor applications, it was revealed that the fees payable to the FMA for financial adviser exemption applications in the Financial Advisers (Fees) Regulations 2010 need amending to take into account the increase in GST on 1 October 2010.
- 61 The financial adviser exemption application fees in section 6A of the regulations were set using the same application fees and hourly rates as those in the Securities (Fees) Regulations but the fees stated in section 6A only include a 12.5% rate of GST. This is because section 6A was inserted into the regulations through an amendment in 2011 which was after the increase in GST⁸. Therefore, the deeming provisions in the Goods and Services Tax Act 1985 do not apply to adjust the fees in the way they adjust the fees in the pre-October 2010 regulations. It appears the deeming provisions and the increase in GST was overlooked when section 6A was inserted into the fee regulations.
- 62 To maintain consistency, I recommend amending the entire set of fees contained in the Financial Advisers (Fees) Regulations 2010 to reflect the change in GST to 15%. This will bring the financial adviser exemption application fees in section 6A in line with the application fees payable to the FMA in the Securities (Fees) Regulations and those proposed for the auditor application fees above.
- 63 These amendments will produce the following changes in fees:

Regulation	Current fee (GST 12.5%)	New fee (GST 15%)
4(1)	1120	1144.89
4(2)	560	572.44
5(1)	4780	4886.22
5(2)	4500	4600.00
6A(a)	112.5	115.00
b(i)	225	230.00
b(ii)	163	166.62

⁸ Financial Advisers (Fees) Amendment Regulations 2011

In Confidence

Conditions of accreditation

- 64 Section 48 of the Act empowers the FMA to accredit persons to perform regulatory functions for the purposes of the Act. Such grants of accreditation may be made subject to conditions relating to the following matters:
- a. Conditions relating to the procedure that an accredited body must follow when performing regulatory functions; and
 - b. Conditions to ensure that the accredited body's audit regulatory systems are adequate and effective:
- 65 The purpose of allowing the imposition of conditions of accreditation is to assist the FMA in ensuring that accredited bodies retain the on-going ability to discharge their regulatory responsibilities efficiently and effectively.
- 66 To fully achieve this purpose, the FMA has indicated it may be necessary to set additional conditions not already provided for under section 49. These conditions should relate to adherence with the minimum standards of accreditation prescribed by the FMA, as well as organisation structure, governance systems and financial stability.
- 67 Permitting the FMA to set conditions in respect of organisational structure and governance systems is desirable to ensure that all accredited bodies have governance systems that will allow their regulatory functions to be performed with objectivity, impartiality and independence, and to a standard consistent with statutory objectives.
- 68 In respect of financial stability, it is similarly desirable that the FMA be able to set conditions requiring accredited bodies to have sufficient financial resources at all times to perform the regulatory functions to a high standard and in a manner consistent with the purposes of the Act. Proof of financial stability might require the accredited body to demonstrate its income can cover its routine expenditure on an on-going basis. Additionally, it may be desirable that the FMA be aware as to accredited bodies' ability to reasonably fund any capital or project based expenditure which is necessary or otherwise planned including any costs associated with establishing audit regulatory systems required for the purposes of the Act.
- 69 I therefore propose that the FMA should also be able to prescribe:
- a. Conditions relating to on-going adherence with the minimum standards for accreditation as an accredited body prescribed by the FMA.
 - b. Conditions relating to the financial position, resources and stability of an accredited body;
 - c. Conditions to ensure that the accredited body's governance and organisational structures are adequate and effective for the purpose of auditor regulation;

Accredited bodies annual report to FMA

- 70 Section 51 of the Act requires that accredited bodies supply an annual report to the FMA. The purpose of the report is to disclose information relating to the performance of each accredited body in carrying out regulatory functions for the purposes of this Act; and to alert the FMA to any material change in the audit regulatory systems which each accredited body has implemented.

In Confidence

- 71 I propose that information relating to organisational structure, governance systems and financial stability be prescribed as matters for inclusion in each annual report an accredited body must supply to the FMA.

Consultation

- 72 The Ministry of Justice, the Treasury, the Financial Markets Authority, and the New Zealand Companies Office, have been consulted on this paper.
- 73 The Department of Prime Minister and Cabinet has been informed.
- 74 The New Zealand Institute of Chartered Accountants and CPA Australia were informed of the fee proposals. No adverse responses were received.

Fiscal Implications

- 75 The proposed fees relating to the Registrar have been set at levels to enable the Crown to recover the costs of establishing and administering the new regulatory regime. I expect that in the initial year of implementation at least 125 auditors and audit firms will apply to be registered. Once the initial implementation period is concluded and the legislation is fully in force, I expect there to be a number of new applications each year and a number of providers who decide to exit the industry. The volume of on-going renewals and confirmations from those who are already authorised and registered is expected to be consistent with initial application volumes.
- 76 To ensure that registration fees reflect costs on an on-going basis, it is proposed that the fees be reviewed not later than 5 years after the regime comes fully into effect. At this time an assessment of actual registration volumes can be undertaken and more accurate auditor numbers will be known. Estimated volumes to date are based on discussions with representative industry bodies.
- 77 The Companies Office expects to receive 125 - 150 applications for registration between July 2012 and July 2014, at a fee of \$350 per application. The revenue from the registration application fees is expected to be \$43,750.00 - \$52,500.00.
- 78 The proposed fees relating to activities undertaken by the FMA are consistent with those for similar applications to the FMA under the Securities (Fees) Regulations 1998 and the Financial Advisers (Fees) Regulations 2010.
- 79 In this wider context, the estimated fiscal implications of Government regulation of the audit sector will be to impose the following direct costs on auditors and audit firms regulated directly by the FMA⁹ are as follows:

⁹ Overseas auditors and audit firms are the only persons under the Auditor Regulation Act who are licensed directly by the FMA. Fees which New Zealand auditors and audit firms will be required to pay New Zealand accredited bodies will be set by each accredited bodies in accordance with their own cost structures.

In Confidence

Auditor		Audit Firm	
<i>One-off application fees</i>		<i>One-off application fees</i>	
Licence	115 ¹⁰ (+ hourly rate)	Registration (FMA)	115 ¹¹ (+ hourly rate)
Registration	350	Registration (Registrar)	350
Total	465	Total	465

Auditor		Audit Firm	
<i>On-going fees</i>		<i>On-going fees</i>	
Annual Confirmation	110	Annual Confirmation	110
Auditor Levy	[Withheld] ¹²	Quality Review (Annualised)	10,000 ¹³
Total	[Withheld]	Total	10,110

- 80 The above estimates are based on fees required by Crown agencies, and do not include any operating fees which may be imposed by accredited professional bodies.
- 81 The application fees and hourly rates used for the auditor fees above will need to be reviewed following implementation to ascertain whether they sufficiently reflect the costs to the FMA of providing these services to the financial sector. I propose including these fees in a more general review of FMA fees and levies that I will be undertaking in 2014.

Human Rights

- 82 The proposals of this Cabinet paper are consistent with the New Zealand Bill of Rights Act 1990.

¹⁰ In addition to the \$115 flat fee which will be charged per application, applicants will also be liable for an additional fee constituting the relevant hourly rate for work undertaken by FMA staff in processing the application. This hourly component is not factored into the total, as the amount of time required to the process an application overseas auditor is currently unknown.

¹¹ In addition to the \$115 flat fee which will be charged per application, applicants will also be liable for an additional fee constituting the relevant hourly rate for work undertaken by FMA staff in processing the application. This hourly component is not factored into the total, as the amount of time required to the process an application overseas auditor is currently unknown.

¹² The auditor levy is to be set under a separate policy process to provide funding for the FMA's oversight of the wider financial sector. [Withheld].

¹³ It is estimated that a quality review will have an estimated average cost of \$40,000 over four years. Actual costs and will vary from firm to firm according to size and complexity. Timing of quality reviews may not occur less frequently than once every four years, but may occur more frequently.

In Confidence

Legislative Implications

83 The proposals will require the drafting of regulations. The regulations will need to come into force before 1 May 2012, two months prior to the commencement date of compulsory licensing and registration under the Act.

Regulatory Impact Analysis

84 Treasury has granted an exemption from RIA requirements for matters relating to the technical adjustment of the Financial Advisers (Fees) Regulations 2010. The RIA requirements apply to all other proposals in this paper. The attached RIS sets out the impacts of the proposals.

Quality of the Impact Analysis

85 The Deputy Secretary, Organisational Development and Support Branch, Ministry of Economic Development and the Regulatory Impact Analysis Review Panel have reviewed the Regulatory Impact Statement (RIS) prepared by the Ministry of Economic Development and associated supporting material, and consider that the information and analysis summarised in the RIS meets the criteria necessary for Ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.

Consistency with Government Statement on Regulation

I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that, aside from the risks, uncertainties and caveats already noted in this Cabinet paper, the regulatory proposals recommended in this paper:

- Are required in the public interest;
- Will deliver the highest net benefits of the practical options available, and
- Are consistent with our commitments in the Government Statement on Regulation

Publicity

86 A copy of this paper will be made available on the MED website.

In Confidence

Recommendations

- 87 It is recommended that the Committee
- 1 **Note** that the Auditor Regulation Act 2011 was passed on 19 May 2011.
 - 2 **Agree** that an application for registration as an auditor or audit firm must contain the following additional information:
 - 2.1 The home jurisdiction of the auditor or audit firm.
 - 2.2 In the case of an individual auditor, the audit firm that licensed auditor works for (if any).
 - 3 **Agree** that accredited bodies and the Financial Markets Authority must notify the following prescribed changes to the Registrar of Companies within 10 days of becoming aware of the change occurring:
 - 3.1 In the case of an individual:
 - 3.1.1 Change in the conditions placed on a licence;
 - 3.1.2 Change in the kinds of issuer audits which may be performed;
 - 3.1.3 Suspension or cancellation of a licence that has been issued to the licensed auditor or any other action that has been taken on a disciplinary matter against the licensed auditor by an accredited body, a disciplinary body, or the Financial Markets Authority;
 - 3.1.4 Change in the audit firm that a licensed auditor works for;
 - 3.1.5 Change in the name and business address of the auditor.
 - 3.2 In the case of an audit firm:
 - 3.2.1 Change in the conditions placed on the registration that are currently in force;
 - 3.2.2 Change in the name and business address of the audit firm.
 - 4 **Agree** that an application for a transitional licence as an auditor must contain the following information:
 - 4.1 The full name and business address (both physical and electronic) of the licensed auditor;
 - 4.2 The home jurisdiction of the licensed auditor
 - 4.3 Information identifying an issuer audit that the applicant acted as the auditor or audit engagement partner in respect of within the preceding two years;
 - 4.4 If a New Zealand auditor, evidence of current membership of the New Zealand Institute of Chartered Accountants, and the period they have been a member for.
 - 4.5 If an overseas auditor, evidence of current membership of one of the professional bodies named in the Gazette, and compliance with other requirements to act as an auditor in that jurisdiction.

In Confidence

- 5 **Agree** that an application for transitional registration as an audit firm must contain the following information:
 - 5.1 The full name and business address (both physical and electronic) of the firm;
 - 5.2 The full names of all of the partners and employees of the firm that are licensed auditors;
 - 5.3 A signed certificate confirming that they systems that comply with the External Review Board's Professional and Ethical Standard 3;
 - 5.4 Details of their professional indemnity insurance, or a copy of their policy;
 - 5.5 Information identifying an issuer audit within the preceding two years which the applicant acted as the auditor on.
- 6 **Agree** that the Financial Markets Authority may impose conditions on accredited bodies in respect of:
 - 6.1 The governance systems and organisational structure of the accredited body;
 - 6.2 The financial position, resources or financial stability of the accredited body;
 - 6.3 Requiring on-going compliance with minimum standards prescribed by the Financial Markets Authority.
- 7 **Agree** that the following information must be provided by accredited bodies in annual reports to the Financial Markets Authority:
 - 7.1 Information relating to the governance systems and organisational structure of the accredited body;
 - 7.2 Information relating to the financial stability of the accredited body.
- 8 **Agree** that the following countries, states, or territories be prescribed for the purposes of the definition of overseas auditor:
 - 8.1 Australia;
 - 8.2 The European Union;
 - 8.3 Hong Kong;
 - 8.4 Singapore;
 - 8.5 The United States.
- 9 **Agree** that the following changes must be notified to the Financial Markets Authority by overseas auditors within 10 working days of first becoming aware of the change occurring:
 - 9.1 Changes to the conditions of overseas licences;
 - 9.2 Changes to business address (both physical and electronic) of auditor;
 - 9.3 Change in the firm the auditor works for.
- 10 **Agree** that information or documents sent or delivered to the Registrar for the purposes of registration must be submitted through an electronic web portal.
- 11 **Agree** to permit the Registrar of Companies to refuse access to the register for maintenance reasons, in response to technical difficulties in its maintenance or operation, or to ensure the integrity of the register's security.

In Confidence

- 12 **Agree** to the GST inclusive Registrar of Companies application fee of \$350 per auditor or audit firm for the processing of their registration applications.
- 13 **Agree** to the GST inclusive Registrar of Companies fee of \$110 per auditor of audit firm for processing annual confirmation of information held on the register.
- 14 **Note** that the Auditor Regulation Act 2011 creates a new auditor oversight function for the Financial Markets Authority. Section 84 of the Auditor Regulation Act 2011 provides the authority for regulations to set charges for aspects of the Financial Markets Authority's new functions in relation to auditors.
- 15 **Note** that in addition to the specific fees for service under the Auditor Regulation Act, there is also a Financial Markets Authority levy which licensed auditors will have to pay annually to contribute to funding the Financial Markets Authority's general powers, functions and duties under the Financial Markets Authority Act 2011. The Financial Markets Authority levy is expected to take effect from 2 April 2012 and will be reviewed in 2014.
- 16 **Agree** to the following GST inclusive Financial Markets Authority application fees and hourly rates for processing applications by overseas auditors for licences, applications by overseas auditing firms for registration, and applications to become accredited professional accounting bodies:
 - 16.1 A fee of \$115 for an application;
 - 16.2 A fee calculated at the following hourly rates in respect of an application:
 - 16.2.1 For work carried out by a member of the Financial Markets Authority, an hourly rate of \$230;
 - 16.2.2 For work carried out by an officer or employee of the Financial Markets Authority qualified in accountancy, business, commerce, economics, or law, or who is appropriately qualified by reason of skills, training, or experience, an hourly rate of \$166.62; and
 - 16.2.3 The costs incurred by the Financial Markets Authority in processing the application, including; obtaining expert advice or assistance.
- 17 **Agree** to the following GST inclusive Financial Markets Authority application fees and hourly rates for conducting quality reviews of practices:
 - 17.1 A fee of \$115 for an application;
 - 17.2 A fee calculated at the following hourly rates in respect of an application:
 - 17.2.1 For work carried out by a member of the Financial Markets Authority, an hourly rate of \$230;
 - 17.2.2 For work carried out by an officer or employee of the Financial Markets Authority qualified in accountancy, business, commerce, economics, or law, or who is appropriately qualified by reason of skills, training, or experience, an hourly rate of \$166.62; and
 - 17.2.3 The costs incurred by the Financial Markets Authority in processing the application, including; obtaining expert advice or assistance; and engaging an accredited body or any other suitably qualified person to carry out the quality review.

In Confidence

- 18 **Note** that the application fees and hourly rates in recommendation 16 and 17 are consistent with those for applications under the Securities (Fees) Regulations 1998 and the Financial Advisers (Fees) Regulations 2010 apart from the change in GST rate.
- 19 **Note** that the fees payable to the Financial Markets Authority for financial adviser exemption applications in the Financial Advisers (Fees) Regulations 2010 need amending to take into account the increase in GST on 1 October 2010.
- 20 **Agree** to authorise drafting instructions being issued to the Parliamentary Counsel Office to amend the Financial Advisers (Fees) Regulations 2010 to reflect the increase in GST from 12.5% to 15%.
- 21 **Invite** the Minister of Commerce to instruct Parliamentary Counsel to draft regulations prescribing the matters referred to in this paper and such other matters that may be necessary for or incidental for the administration and implementation of the above recommendations.
- 22 **Agree** to release this Cabinet paper, including the RIS, on the Ministry of Economic Development website with any necessary withholdings.

Hon Craig Foss
Minister of Commerce

____ / ____ / ____