Plugging the anti-money laundering loophole should be the key plank of combating misuse of the financial service providers register

Any government crackdown on abuse of New Zealand's Financial Service Providers Register (FSPR) simply must plug the anti-money laundering law loophole that allows companies to register in New Zealand and operate overseas without being supervised for compliance with our anti-money laundering laws.

This is a no brainer and it's very disappointing not to see this issue specifically addressed in the six options outlined by the Ministry of Business, Innovation & Employment (MBIE) as potential ways to tackle abuse of the FSPR.

That said, it's heartening to see the Government finally appears to be moving with urgency to tackle the stain on NZ's international reputation caused by the FSPR.

MBIE's options paper does encouragingly say it's working with the Ministry of Justice looking at how the preferred option settled upon would work alongside anti-money laundering and countering financing of terrorism legislation, and whether any changes to the Anti-Money Laundering and Countering the Financing of Terrorism Act (AML/CFT Act) would help resolve misuse issues.

I am concerned however, that by not being a specific option itself, plugging the hole in the anti-money laundering law isn't being prioritised highly enough. As the situation stands, there's a massive arbitrage opportunity for NZ registered, but overseas operating entities.

The problem

The problem is that the existing territorial guidance for the AML/CFT Act means NZ registered financial services providers that operate overseas but not within NZ, aren't supervised by our regulators for compliance with the AML/CFT Act. The guidance says, "An entity incorporated or formed in New Zealand, which carries on financial activities wholly outside New Zealand, will not be a 'reporting entity' under the AML/CFT Act."

In interest.co.nz articles I have quoted NZ's AML/CFT Act supervisors specifically saying locally registered but offshore operating financial service providers such as **Breder Suasso** and **Vivier and Company** are not supervised for compliance with the AML/CFT Act. (The latter denies allegations made in a programme by Irish broadcaster RTE linking it to tax fraud and money laundering. Despite Vivier's threat of legal action RTE's programme **remains available on its website here**).

Ironically one of the purposes of the Financial Service Providers Act is to help NZ meet its Financial Action Task Force (FATF) obligations. FATF is an inter-governmental body established by the Group of Seven that sets international policies and standards on anti-money laundering and combating terrorist financing. How can NZ possibly be meeting FATF obligations when dozens, if not hundreds, of NZ registered financial service providers are operating overseas without needing to comply with our AML/CFT Act?

These financial services providers are promoting themselves overseas as NZ registered, NZ companies, and in some cases NZ regulated even though the latter claim simply isn't true.

To give some idea of the scale of money laundering globally, **the United Nations estimates** the volume of money laundered in one year is between 2% and 5% of global Gross Domestic Product, or US$800 billion to US$2 trillion. I outlined my views on **NZ's significant potential as a money laundering jurisdiction here**.

NZ bank accounts as backstops

In the first instance the Ministry of Justice, which leads the development of NZ's AML/CFT policy, and the three entities that supervise compliance with the AML/CFT Act being the Reserve Bank, Financial

Markets Authority (FMA) and Department of Internal Affairs, simply must get their heads together, agree on and **issue updated territorial guidance** that spells out any entity registered as a NZ financial service provider must comply with the AML/CFT Act even if its customers are overseas. And the supervisors must vigorously apply the laws.

Additionally, as a backstop, make NZ registered financial service providers use NZ banks. The latter simply must take their AML/CFT Act compliance seriously and are overseen for compliance by the Reserve Bank.

This, I believe, is the starting point for fixing abuse of the FSPR, the extent of which I highlighted in **my previous submission to MBIE here**, and is starkly demonstrated in these subsequent articles about Euro Forex, which misled its mainly Chinese clients into believing it was a fully-fledged licensed and regulated NZ financial service provider, **here** and **here**. Euro Forex is now under investigation by the City of London Police.

In terms of the actual options suggested by MBIE in the options paper they are:

Option 1: Include stronger registration requirements

Option 2: Amend the grounds for de-registration

Option 3: Amend the territorial scope of the legislation to require a legitimate connection to New Zealand

Option 4: Require trust and company service providers to register

Option 5: Limit public access to all or parts of the FSP Register

Option 6: Convert the current FSP Register into a non-public notification list

(**Full detail on the six options can be found here**).

'No' to restricting public access

Below is my take on the options in reverse order.

I don't want to see options five and six implemented, even if they may have some merit in tackling misuse. Limiting public access and/or making the FSPR non-public smacks of being the wrong thing to do in a democracy where freedom of information must remain paramount. It could potentially also open a can of worms leading to allegations of secretive bureaucratic deals with questionable companies. Sunlight is the best disinfectant.

On the other hand option four has much merit. It's past time trust and company service providers were forced to take responsibility for their actions. I support aligning registration obligations with the AML/CFT Act with trust and company service providers “reporting entities”, given they currently act as directors and nominee shareholders providing anonymous registration for overseas clients.

As noted in my previous submission, a 2012 Cabinet paper said the Companies Office monitored 77 trust and company service providers actively working with NZ registered, but overseas operating companies. These are located all around the world as **highlighted by the Israel-based Archer Consultants**, which touted NZ registration for online forex and binary options companies as its "flagship solution."

Why not also set out that any trust and company service providers who want to provide the service of registering NZ companies must be based in NZ?

Beware of complexity

Option three, proposing that NZ registered financial service providers must have customers in NZ or must carry on the business of providing a financial service here, is potentially problematic. How many NZ customers would they require? Would one or two be enough? Could they be wholesale or retail customers? And what might such a rule mean for a bona fide fund manager, for example, who solely wanted to provide services to overseas clients?

The risk is option three may create too much complexity ripe for exploitation.

And I'm not in favour of option two. Whilst the FMA's power to direct the Registrar of Companies to remove companies from the FSPR where it's likely the company is giving a false or misleading impression about the extent to which it's regulated in NZ follows a painstaking natural justice process, it's the correct path for a self-respecting democracy. The onus is on the FMA to get it right when it moves to deregister a company, something highlighted in **the regulator's to be appealed court defeat to Vivier**.

How about a black list?

Lastly to option one. I am in favour of tougher registration requirements. However, making applicants confirm and provide proof they're licensed and/or properly supervised in their home jurisdiction and in any other jurisdictions they want to offer services in, could create banana skins. Not all jurisdictions have reliable regulators up to the standards we should require. A black list of jurisdictions could be drawn up, meaning if an applicant was based in a black listed location or wanted to provide services in it, the applicant would be denied NZ registration. **FATF has such a list**, which would be a good starting point.

Another factor to consider is that companies currently registered as NZ financial service providers are operating overseas in a range of different languages including Spanish, Chinese and Arabic that few, if any, NZ bureaucrats may speak or read. Therefore a rule could be introduced so all information about a registered NZ financial service provider must be available in English, including a full and proper English language version of any website.

Ultimately there's probably no silver bullet to solve the problem of abuse of the FSPR. However, I believe the steps endorsed above would see NZ able to combat this misuse without having one hand tied behind our collective back, which is certainly how things currently stand.

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