MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Financial Service Providers (Registration and Dispute Resolution) Act 2008

Report on the operation of Part 2: Registration

newzealand.govt.nz

TABLE OF CONTENTS

INTRODUCTION

The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) requires all financial service providers to be registered and, if they provide services to retail clients, to belong to an approved dispute resolution scheme. These requirements aim to promote confident and informed participation of businesses, investors, and consumers in fair, efficient, and transparent financial markets.

The FSP Act is divided into three parts:

- Part 1: Preliminary Provisions
- Part 2: Registration
- Part 3: Dispute Resolution

The Ministry of Business, Innovation & Employment (**MBIE**) is required to review the operation of the Registration part of the FSP Act and report to the Minister of Commerce & Consumer Affairs by 16 August 2015 (five years after its commencement).[1]

Structure of this report and link to wider review of the FSP Act and the FA Act

MBIE is also required to review the Financial Advisers Act 2008 (**FA Act**) and provide recommendations to the Minister on changes (if any) by July 2016. Given that the FA Act and FSP Act overlap significantly, MBIE is reviewing them together. Terms of reference for the wider review were agreed to by Cabinet and published on MBIE's website in March 2015. The wider review aims to:

- Analyse the role of financial advice and financial service provider registration and dispute resolution in improving financial outcomes for New Zealanders, and to assess and update the objectives of, and rationale for, regulatory intervention in this area.
- Assess the performance of the FA Act and FSP Act against the updated objectives of, and rationale for, regulatory intervention in this area.
- Meet the statutory review requirements in section 161 of the FA Act by reviewing the operation of the FA Act and preparing a report for the Minister of Commerce and Consumer Affairs, including recommendations on whether any amendments to the FA Act are necessary or desirable by July 2016.
- Meet the statutory review requirements in section 45 of the FSP Act by reviewing the operation of Part 2 of the FSP Act and preparing a report for the Minister of Commerce and Consumer Affairs, including recommendations on any amendments to Part 2 of the FSP Act by August 2015.

This report fulfils the requirements in section 45 of the FSP Act. Recognising the significant interdependencies between the FA Act and FSP Act, the findings outlined in this report will feed into the wider review of those two Acts. This approach will avoid tweaks being made to the registration regime in isolation of amendments that may be made to the FA Act and FSP Act upon completion of the wider review.

[1] As required by the FSP Act, MBIE produced a report on Part 3: Dispute Resolution in September 2013.

This report is structured as follows:

- Section 1 explains the context behind the establishment of the Register, outlines some developments since the Register was established and provides some background information about how the Register works in practice.
- Section 2 provides MBIE's assessment of how well the Register is delivering on its objectives and includes recommended actions to be progressed as part of the wider review. The assessment is against the four objectives of the Registration regime (as set out in section 9 of the FSP Act), that is to:
    - Enable the public to access information about financial service providers.
    - Enable the Registrar and other regulators to regulate financial service providers.
    - Prohibit certain people from being involved in the management or direction of registered financial service providers.
    - Conform with New Zealand's obligations under the Financial Action Taskforce Recommendations.
- Section 3 provides a summary of MBIE's assessment of the operation of the Registration part of the FSP Act and recommended actions.

Many of the findings in this report are based on feedback received from stakeholders (including relevant departments and agencies) during the first stage of the wider FA Act and FSP Act review as well as submissions received on an Issues Paper that was released for public consultation between 26 May 2015 and 22 July 2015. A summary of the key themes from submissions on the Register in the Issues Paper can be found in Appendix 3.

1. BACKGROUND TO THE REGISTRATION REGIME

Why do we have a financial service provider registration regime?

Before the introduction of the FSP Act, there was no comprehensive way to identify or monitor financial service providers. This caused issues for policy makers, regulators and consumers. In particular:

- Policymakers could not identify the number of people who could be affected by any regulatory actions being contemplated.
- Regulators found it difficult to identify the regulated population.
- No public record existed of who was permitted to provide certain types of financial services, potentially giving rise to public confusion and uncertainty.

A Register was also needed to satisfy New Zealand's international obligations under the Financial Action Task Force (**FATF**) Recommendations. These Recommendations include requiring the licensing or registration of all financial institutions to ensure effective monitoring is in place to confirm financial institutions are meeting their anti-money laundering obligations (refer Appendix 1). A Register would therefore assist in enabling anti-money laundering and countering financing terrorism (**AML-CFT**) supervisors to identify financial institutions with obligations under the AML-CFT Act.

Since 1 December 2010 anyone providing a financial service must be registered

From 1 December 2010 anyone providing a financial service (such as insurers, banks, lenders and financial advisers) has been required to be registered on the Financial Service Providers Register (the Register) administered by the Companies Office. The full list of financial services that are captured by the registration regime is set out in Appendix 2. The qualification requirements for registration are similar to those for a director of a New Zealand company, including not being an undischarged bankrupt or convicted of a crime in New Zealand involving dishonesty in the previous five years.

The Register records the name, address and (if applicable) the dispute resolution scheme of the provider, along with the services it is registered to provide and any relevant licences it has under other legislation. Approximately 12,000 financial service providers (individuals and entities) are currently registered.

In 2014 the FSP Act was amended to give more powers to the Financial Markets Authority (FMA) to prevent registration and to deregister financial service providers

The Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014 provided that the Registrar can refer an application for registration or an existing registration to the FMA where the application or registration could create a misleading appearance as to how the provider provides financial services in New Zealand or will be regulated by New Zealand law, or otherwise damages the integrity or reputation of New Zealand financial markets (section 15A/18A).

How does the Register work in practice?

The FSP Act creates a mandatory registration regime for financial service providers in New Zealand. Only people registered on the Register are permitted to provide financial services as part of their business.

The FSP Act applies some minimum requirements for registration:

- The person must have any licence required under legislation to provide the service they provide (for example, to register as a derivatives issuer, a person would need to be licensed to make an offer of derivatives under the FMC Act).
- The person (or for an entity, its controlling owners, directors and senior management) must not be disqualified. Disqualification grounds include being an undischarged bankrupt, being prohibited from being a director, promoter or manager of an incorporated or unincorporated body, or having committed a dishonesty offence within the past five years.

When applying to be registered, a prospective financial service provider must provide the Registrar with their details and information on the financial services they intend providing, and pay the registration fee and relevant FMA levy. Financial service providers are then required to confirm their details annually and pay the annual registration fee and applicable FMA levy.

The Registrar may refer an application to the FMA where the effect of registration is likely to mislead that the financial service provider is providing services in NZ, is based in NZ, or is regulated by NZ law or that registration is likely to otherwise damage the integrity or reputation of NZ's financial markets. The FMA can then prevent registration, taking into account those circumstances above.

Once registered, the financial service provider's name, address and the financial services that they are registered and (if applicable) licensed to provide are available on the publicly accessible Register.

The Registrar can also share any information that it holds on financial service providers with enforcement agencies, such as the FMA, the Commerce Commission and the New Zealand Police, as well as with their international counterparts.

2. ASSESSMENT OF REGISTRATION PROVISIONS AND RECOMMENDATIONS

This section sets out MBIE's assessment of how well the Register is delivering on its objectives (as set out in the Act) to:

- Enable the public to access information about financial service providers.
- Enable the Registrar and other regulators to regulate financial service providers.
- Prohibit certain people from being involved in the management or direction of registered financial service providers.
- Conform with New Zealand's obligations under the Financial Action Taskforce Recommendations.

These objectives should be read in the context of the overall purposes of the FSP Act, which are:

- To promote the confident and informed participation of businesses, investors, and consumers in the financial markets.
- To promote and facilitate the development of fair, efficient, and transparent financial markets.

Does the Register enable the public to access information about financial service providers?

One of the original purposes of the Register was to enable the public to access information about financial service providers. In the broader context of the FSP Act, this was aimed at promoting the confident and informed participation of consumers in financial markets.

Previously, there was no easily accessible place to search for and obtain information on financial service providers. Instead, it was costly for the public to gather information on the products and services offered by the various providers. This presence of asymmetric information therefore created the risk that the public was not as well-informed as it could be and may make inefficient choices about financial products and services.

To resolve this, the Register was envisaged to be electronic and easily searchable for financial service providers and to contain information about an entity in one easily accessible place. The result would be to improve overall information on financial service providers and products to assist decision-making.

The Register provides a single source of information for the public on financial service providers…

The Register has achieved this to the extent that the public can now go to a single place for information on financial service providers. This provides the public with a record of who is permitted to provide financial services; which did not previously exist. The information contained on the Register includes the name, address and (if applicable) the dispute resolution scheme of the financial service provider, along with the services it is registered to provide and any relevant licences it has

under other legislation. Searching is possible by name, financial service provider number, financial service, financial service provider status and location.

…but the Register does not appear to be widely known about, used or understood by the public…

However, we have several concerns with how the Register is achieving its intention to assist the public to make informed decisions. While data from the Companies Office shows that usage of the Register has steadily increased since its introduction (from around 95,000 unique users in 2011 to 150,000 in 2014, and an average 33,000 searches a month), feedback we have received indicates that the Register is not widely known about or used by the public. For example, none of the participants in the consumer focus groups commissioned by MBIE in March 2015 were aware of the Register. Submissions on the Issues Paper and responses to the consumer brochure online survey that went out alongside the Issues Paper confirmed the Register's low profile, and concerns that consumers may be giving too much weight to the registration process.

…and the information on the Register may be of limited value to the public for several reasons

Consumers gave mixed views on the value of the Register. On the one hand, some participants felt its existence had a positive impact on their trust and confidence in a financial service provider, and in the regulation of the sector overall. On the other hand, some consumer focus group participants, Issues Paper submitters and consumer survey respondents were unconvinced that consumers would use it or that it would be an effective way to find and evaluate an adviser.

This indicates that there are other factors (beyond the public being largely unaware of the Register) that may explain why the public may not use the Register. These include:

- **The Register has limited functionality**. The FSP Act specifies only a limited range of information that can be searched for on the Register. The search functions to help the public find what they are looking for have improved but the Register is not generally seen as 'user friendly'. Submissions and consumer survey feedback advocate making the Register more searchable, comparable and more interactive (eg. providing feedback on advisers).

- **The Register contains limited useful information.** The Register has provided public access to information about financial service providers, as per its original objectives. However, it has not provided features beyond that basic original intent (eg. enabling comparison of advisers, or other uses that New Zealand consumers might specifically want). Most of the guidance on the Register remains aimed at advisers. Registers in jurisdictions such as Australia provide greater searchable detail on individuals and entities (such as relevant qualifications and training, and disciplinary history) and explanations on what different services mean in 'plain English' to assist consumers. These features were seen by submitters as valuable additions to our Register as well. '*It needs more information about the adviser - who they are and how they can help me' - Consumer survey respondent.*

- **The Register contains information that the public does not understand.** For example, we frequently receive feedback that the public does not have a good understanding of the difference between a "Registered Financial Adviser (RFA)" and an "Authorised Financial Adviser (AFA)" and, as a result, the Register can be misleading to consumers.

The last two relate to the wider regulatory regime, which we often hear is too complex and difficult to understand. Moreover, we hear anecdotally that the public often interprets a financial service provider that is registered as being actively monitored by a regulator in New Zealand. The failure of the Register to distinguish between being 'registered' and being 'regulated' is a concern for regulators. While there are disclaimers on the Register to clarify this point, if the public does not understand the regulatory regime, the disclaimers will have little effect. *'Most people believe the threshold and monitoring required to be on the Register is far greater than the simple administrative process it actually amounts to' - Consumer survey respondent.*

These factors have meant regulators have not wanted to actively promote the Register as an effective way for consumers to choose a financial adviser. The purpose of the Register going forward needs to be made clear, and that the current dual purpose as a regulatory tool and consumer tool may not be optimal. *'The Register shouldn't be available to the public, and it's not necessary for it to be so…the Register was intended to be just for regulatory purposes, and to comply with FATF requirements in that regard. That should be its only goal' – OM Financial Ltd.*

Recommendations

Make changes to the Register in the context of the overall FSP and FAA review, not in isolation

As above, the Register is largely not achieving its purpose of promoting the confident and informed participation of the public in financial markets in its current form, it may be confusing and/or misleading the public about financial service providers and how they are regulated. The purpose and scope of the Register for consumers needs to be clarified and clearly communicated.

We don't recommend making substantial changes to the Register now, in isolation of the wider review. Many of the issues with the Register, namely that it is not well-known and its content is not well-understood by the public stem from issues with the wider regulatory regime.

We recommend that the wider review consider whether changes should be made to make the Register more useful to consumers, or whether information consumers and advisers seem to want could be better provided in some other format (see below). There would be little value at this point in time of making the Register more comprehensive in terms of information about a financial adviser's qualifications if the qualification requirements are changed as a result of the review. Likewise, improving the search functions for finding an "AFA" will not help the public if the public does not understand what an AFA is or if these designations are amended.

We also recommend MBIE work with the Companies Office, FMA, Department of Internal Affairs (DIA), Ministry of Justice and Immigration New Zealand to identify any plausible interim solutions to reputational risks from the Register that could be put in place whilst the wider review continues.

Examine what information, and in what form, will help the public make confident and informed decisions about financial service providers

As part of the wider review, we recommend examining the benefits to the public of a publicly available register of financial service providers. This would include asking consumers what information, and in what form, would help them to make confident and informed decisions about

financial service providers, and assessing the relative costs and benefits of providing that information.

For example, there is a question of whether the details of financial service providers who are not subject to a separate licensing or regulatory regime should be included in a publicly available form of the Register. We heard that simply including financial service providers on a public register can give consumers an impression that they are regulated, and hence may give a false sense of confidence or protection. The structure of the current regulatory regime also limits what can be reflected on the Register. For the public to understand what they should be looking for on the Register, explanations of the regulatory differences between AFAs, RFA and QFE advisers may be helpful.

Until this analysis is conducted and any necessary changes made, we do not recommend promoting the Register as a consumer tool to make decisions about financial service providers.

Does the Register enable the Registrar and other regulators to regulate financial service providers?

Prior to the Register, there was no comprehensive way for regulators to identify or monitor providers of financial services and the specific services they provide.

The 2006 Cabinet paper recommending registration of financial service providers noted that "the proposed registration system will also help relevant financial sector regulatory authorities to assess what regulatory requirements are applicable to an entity, for example, prudential or market conduct regulatory requirements and monitoring requirements, because it will contain information on the types of financial services the entity provides. This means that it will be easier for the regulators to monitor and enforce the law".

The Register has enabled regulators and policy agencies to identify financial service providers…

Both regulators and policy agencies are now able to identify financial service providers and utilise this information in performing their functions. For example:

- Policy agencies like MBIE are in a better position to identify how many providers will be impacted by different policy options and hence to understand the costs and benefits of different interventions. For example, if MBIE wanted to explore changing the disclosure obligations for a given category of financial service provider, it could use the Register to broadly assess how many financial service providers would be subject to the new requirements and how many consumers would benefit.
- The FMA and DIA have greater visibility of how many financial service providers (and entities) there are at an aggregate level and what specific financial services they have registered themselves for.
- Dispute resolution schemes, regulators and enforcement agencies have a local point of contact for financial service providers.
- The Register provides a practical and efficient mechanism for collection of fees and levies from all financial service providers.

…but the Register's accuracy cannot be relied upon at an individual level…

Maintaining the accuracy of the Register is an ongoing challenge. While it has helped with broadly identifying financial service providers and the specific services they provide, it cannot be relied upon to accurately reflect the individual services that a given person or entity provides. Providers self-select their services from a list of 25 potential services. The categories of financial services are not always well-understood and there are overlaps between some of the categories. Except where the financial service is subject to its own regulatory regime (see below), the registration is not checked for accuracy. For example, the ability of advisers to alter the financial services they have registered for once registered appears to be a risk to the integrity and accuracy of the Register.

… and the Register is limited as a monitoring and enforcement tool

The Register has helped regulators and policy makers to identify financial service providers. However, it seems the Register could do more to achieve its original aim of assisting regulators to monitor and enforce the law (should the Act enable this).

The registration regime in itself is not intended to create what is usually understood as a "licensing" regime. For example, it does not involve educational or competency requirements or on-going professional conduct obligations. Certain financial services providers are licensed under other Acts, such as banks and some financial advisers. Other financial service providers, such as foreign exchange providers, are not subject to licensing requirements.

Through the registration process, regulators ensure that those registered to provide a financial service have any associated licence (as relevant). Conversely, regulators ensure, when issuing financial service licences, that the applicant is registered on the Register. However, beyond this, the Register is not used to monitor whether an entity has met all regulatory requirements such as disclosure and professional conduct obligations. These requirements are checked through the separate licensing processes established under other Acts (eg. the Financial Markets Conduct Act).

The Register is being misused by some offshore firms to gain the appearance of being regulated in New Zealand

The FSP Act applies to financial service providers that are ordinarily resident in New Zealand or have a place of business in New Zealand, regardless of where the financial service is provided (under section 8A 'Territorial scope').

We are aware of instances of foreign-based financial service providers, registering on the Register primarily to take advantage of New Zealand's reputation as a well-regulated jurisdiction. These financial service providers seek to register for financial services that are not licensed in New Zealand, (such as foreign exchange services) or register for non-licensed activity and then add on or change to a licensed activity later on.

The customers of these financial service providers may incorrectly assume that they are New Zealand-based or licensed in New Zealand, or both. This presents a risk to New Zealand's reputation as a well regulated jurisdiction and to the reputation of legitimate New Zealand-based financial service providers.

Whilst this risk was seen as a matter of priority by those who submitted on the related question in the Issues Paper, the number of fraudulent cases is small. Increased risk profiling and integrity checking by the FMA and Companies Office and new powers to prevent registration and to de-register has reduced the numbers of FSP applications from offshore entities in recent months. However, these new powers are resource intensive and have yet to be thoroughly proven as an effective tool.

Other similar jurisdictions do not have this issue (or at least to the same extent) because they typically license all types of financial service providers. New Zealand opted largely for a registration regime because licensing can impose significant costs, creating a barrier to entry and reducing competition. MBIE considers it would be disproportionate to license all New Zealand financial

service providers purely to address the identified problem with offshore-based financial service providers.

Efforts to overcome misuse of the Register

In 2014, the FMA was given powers to direct the Registrar to decline a registration or deregister a financial service provider following a referral from the Registrar. This is allowed if the FMA considers that the registration creates the false or misleading impression about the extent the provider is regulated in New Zealand or will damage the integrity or reputation of New Zealand's financial markets or New Zealand's law or regulatory arrangements for regulating those markets.

As at 22 July 2015 the FMA has directed the Registrar to remove 40 entities, three others voluntarily deregistered after receiving a Notice of Intention to deregister, and two were deregistered due to their dispute resolution scheme membership being cancelled post the FMA issuing a Notice of Intention to issue a direction to the Registrar. In addition, the FMA has taken action to prevent 34 entities registering as FSPs – 20 by direction to the Registrar, along with five withdrawn and nine expired without renewal during the period of FMA's consideration of their applications.

Three of the deregistered entities have recently appealed their de-registration to the High Court, with hearings set down for August and September 2015.

Recommendations

Ensure offshore providers cannot misuse the Register

Amending the territorial scope and registration requirements of the FSP Act to clearly exclude providers that do not offer a financial service either to or from New Zealand, do not provide a financial service to New Zealanders, or that do not provide a substantive amount of their services from a place of business in New Zealand may help reduce fraudulent financial activity. The majority of Issues Paper submissions in this area also broadly supported more stringent registration requirements in general, or for offshore providers in particular. This may also help to clarify New Zealand's position on offshore-based 'robo-advice' financial providers that New Zealanders may increasingly seek to access in the future.

Changes to the territorial scope of the Act and the inclusion of registration criteria could provide both the Registrar and applicants with clear criteria regarding which providers are not able to register in New Zealand. This would provide for an efficient registration process and would minimise the impact of misuse on the Registrar, and FMA and DIA resources.

A change to the territorial scope was considered in 2014 when changes were made to the Act allowing FMA to direct the Registrar to deregister a financial service provider. At that time, concerns were raised that changes to the territorial scope provisions could result in New Zealand-based financial service providers avoiding registration by ensuring that they do not have a place of business that meets the requirement. We consider this risk of avoidance is low, recognising the low cost of registering and meeting the minimum requirements associated with being registered (i.e. it would likely cost more for a financial service provider to seek to avoid registration). MBIE considers the risk of avoidance is outweighed by the risk to New Zealand's reputation of offshore companies misusing the Register.

We recommend, in particular, that changes to the territorial scope in the FSP Act be progressed as part of the wider review of the FA Act and FSP Act.[2]

Further consider the purpose of the Register as a regulatory tool

As above, the Register was intended to assist regulators to monitor and enforce the law. However, it is not clear that the Register completely fulfils this purpose in its current form, beyond acting as a directory for regulators to identify financial service providers. The outcomes it delivers do not align with the purpose and objectives of other financial markets regulatory initiatives and some of the original purposes of the FSP Act are now achieved in other financial markets legislation. Submissions on the Issues Paper recognised a balance was needed between a harder line to reduce undesirable users of the Register, and keeping compliance manageable for desirable participants.

MBIE recommends that, as part of the wider review of the FA Act and FSP Act, further work be undertaken to understand whether the regime could be enhanced to enable it to assist regulators to perform their regulatory functions.

[2] The final recommendation may depend on other changes made as part of the wider review and developments in relation to the FMA's ability to deregister financial service providers.

How effective is the Register in prohibiting certain people from being involved in the management or direction of registered financial service providers?

One of the purposes of registration was to prohibit certain people from being involved in the management or direction of registered financial service providers.

Prior to the Register, there was no assurance that financial service providers had not been convicted of financial crimes or other misconduct, or met other minimum requirements. This led to an increased risk of unfair, fraudulent or negligent conduct; especially as it is difficult, if not impossible for the public to find out otherwise if a financial service provider has been convicted of a financial crime, been subject to a director/management ban or adjudged bankrupt.

In response, Cabinet agreed that the Registrar be responsible for carrying out negative assurance checks on the controlling shareholders, directors and senior managers of financial service providers, and individual financial service providers. Those providers which do not meet the checks would not be registered and therefore unable to provide financial services.

The Register provides assurance that people providing financial services meet certain requirements

The current Register has achieved this purpose by applying the following minimum requirements in order to qualify for registration as a financial service provider:

- The person must have any licence required under legislation to provide the service they provide (for example, to manage funds a person would be required to be licensed as an investment manager for an offer under the FMC Act).
- The person (or for an entity, its controlling owners, directors and senior management) must not be disqualified. Disqualification grounds include being an undischarged bankrupt, being prohibited from being a director, promoter or manager of an incorporated or unincorporated body, or having committed a dishonesty offence within the past five years.

In the case of an individual, the penalty for providing a financial service and not being registered for that service (or if applicable, a member of a dispute resolution scheme) is imprisonment for a term not exceeding 12 months or a fine not exceeding $10,000 or both. For a person who is not an individual, the penalty is a fine not exceeding $300,000. The same penalties apply if a person holds themselves out to be registered to provide a financial service, or entitled, qualified, able, or willing to do so. In order to provide financial services, providers must also belong to an approved dispute resolution scheme (which is noted in their Register record).

Various submitters supported making requirements for registration more stringent to improve the quality of financial service providers. Suggestions for additional requirements included education, competency, criminal background checks, place of businesses (whether in NZ or offshore) and level of indemnity cover. *'Appropriate minimum registration requirements (be introduced) to mitigate the risks that a registered entity is unable to meet restitution or compensation payments that might arise in the event of an adverse ruling' - IFA*

Additional registration criteria, more controls to check registration information before it goes on the Register and ongoing accuracy checks once it's on were some of the ideas provided. Further tools for the FMA (such as fines for lesser non-compliance offences) were also largely supported in order to improve the robustness of registrations and address non-compliance.

Recommendations

Ensure any future changes continue to prohibit certain people from being involved in the management or direction of registered financial service providers

We consider the current registration requirements have achieved their aim of ensuring financial service providers have any licence required under legislation to provide the service they provide and are not disqualified (including not being an undischarged bankrupt, being prohibited from being a director, promoter or manager of an incorporated or unincorporated body, or having committed a dishonesty offence within the past five years). This contributes to the purposes of the FSP Act to promote the confident and informed participation in and development of fair, efficient and transparent financial markets.

We recommend that any changes made to the Register – including any changes that might be considered in response to this report – be made while ensuring that appropriate requirements remain in place to achieve the purposes of the FSP Act.

Consider whether additional registration criteria should be included

A common suggestion in submissions was to raise the requirements for registration to improve the quality of financial service providers and the quality of information on the Register. We recommend consideration, as part of the wider review, of whether the qualification requirements for registration remain appropriate or should be changed. Minimum requirements must strike a balance between not being so low as to jeopardise confidence in the market and not being so high as to create unnecessary barriers for financial service providers to enter the market.

Does the Register enable New Zealand to conform with its FATF obligations?

The FATF is the international standard-setting and policy making body on combating money laundering and financing of terrorism and proliferation of weapons of mass destruction.

The FATF's standards and policies, known as the FATF Recommendations, cover a wide range of financial, legal and law enforcement sector best practice and procedures. The Recommendations are intended for universal application and implementation. Through the global AML/CFT network, over 188 jurisdictions have endorsed the FATF standards.

New Zealand has been an active member of the FATF since 1991 and is required to implement the Recommendations.

An explicit purpose of the Register is to contribute to New Zealand's compliance with the FATF Recommendations.

The Register enables New Zealand to meet its FATF obligations

FATF Recommendation 26 requires a comprehensive supervisory framework for financial institutions. This includes a recommendation that financial institutions should be licensed or registered. The rationale for this requirement is to improve the transparency and visibility of financial institutions and ensure they are appropriately regulated and supervised.

The Register helps New Zealand to meet its obligations under the FATF obligations by allowing AML-CFT supervisors to identify financial institutions with obligations under the AML-CFT Act.

New Zealand was not complying with abovementioned FATF Recommendation prior to the establishment of the Register. In October 2004, Cabinet agreed in principle that the financial sector be monitored for anti-money laundering compliance in accordance with the FATF Recommendation. Subsequently, in August 2005 Cabinet agreed that one of the objectives of the Review of Financial Product and Providers be to ensure closer compliance with FATF Recommendations.

The FATF Recommendations also explain why the Register covers a broader range of entities than those within the original scope of the Review of Financial Products and Providers as it is based on FATF's definition of a 'financial institution'.

Overall, the Register is meeting this purpose and without the Register New Zealand would not be complying with the FATF Recommendations, with which it is obliged to conform.

Recommendations

Ensure any future changes enable New Zealand to continue to meet its FATF obligations, without creating greater compliance costs for advisers

A register of financial institutions is a necessary component for New Zealand to meet its FATF obligations. Failure to comply may attract money launderers and terrorist financiers to New Zealand. It would also have a negative impact on New Zealand's reputation as an international citizen.

We therefore recommend that any changes made to the Register – including any changes that might be considered in response to concerns with the Register identified in this report – be made with a view to ensure that New Zealand continues to meet its FATF obligations.

3. SUMMARY AND PROPOSED APPROACH TO ADDRESS CONCERNS WITH THE REGISTER

The table below summarises the objectives of the Register and MBIE's findings as to how well the registration regime is delivering on those objectives.

Objective	Assessment
Enable the Registrar and other regulators to regulate financial service providers	✓ The Register has enabled regulators and policy agencies to identify financial service providers
	× The Register's accuracy cannot be relied upon at an individual level
	× The Register does not appear to be useful as a monitoring and enforcement tool
	× The Register is being misused by some offshore firms to gain the appearance of being regulated in New Zealand
Enable the public to access information about financial service providers	✓ Provides a single source of information for the public on financial service providers
	× The Register is not widely known about or used by the public
	× The information on the Register may be of limited value to the public for several reasons
Prohibit certain people from being involved in the management or direction of registered financial service providers	✓ The Register provides assurance that people providing financial services meet certain requirements
	× There is a question of whether additional minimum requirements are needed
Enable New Zealand to conform with its FATF obligations	✓ The Register enables New Zealand to meet its international obligations in relation to implementing the FATF Recommendations

The Register continues to deliver on its objectives of enabling New Zealand to meet its FATF obligations in relation to financial institutions. Any changes made to the registration regime should be made with a view to continuing to ensure that this objective can be met.

The current Register has not delivered on the objective of enabling the public to access information about financial service providers with a view to promoting confident and informed participation in financial markets. However we recommend against making changes to the Register now, in isolation of the wider review. Many of the issues with the Register (namely that it is not well-known and its content is not well-understood by the public) stem from issues with the wider regulatory regime. For example, the confusion about the difference between an RFA and an AFA stems from the Financial

Advisers Act. We therefore recommend that the review consider changes to make the Register more useful to consumers (including the relative costs and benefits of further change and if consumer centric information would be better provided via another mechanism).

We also recommend examining the benefits to the public of a publicly available register of financial service providers. This would include examining what information, and in what form, would help the public to make confident and informed decisions about financial service providers, bearing in mind that too much information can be (and arguably has been) counterproductive.

The current Register has partially delivered on the objective of enabling regulators to regulate financial service providers. Regulators and policy agencies are able to identify how many financial service providers will be impacted by different interventions and collect levies from all providers. However, the Register's usefulness as a monitoring and enforcement tool for regulators appears limited. MBIE recommends that further work be undertaken to understand whether the registration regime could be enhanced to enable it to assist regulators to perform their regulatory functions.

An unintended consequence arising from the Register has been its misuse by offshore firms to gain the appearance of being regulated in New Zealand. This presents a risk to New Zealand's reputation as a well regulated jurisdiction. There may be value in amending the territorial scope and registration criteria of the FSP Act, for example, to clearly exclude providers that do not genuinely offer a financial service in or from New Zealand.

As set out in the Introduction, we recommend that the findings outlined in this report be fed into the wider review of the FA Act and FSP Act. This approach recognises that many of the issues identified here are symptoms of more fundamental issues with the wider FA Act and FSP Act regime (particularly in relation to public use of the Register). The approach also avoids tweaks being made to the registration regime in isolation of amendments that may be made to the FA Act and FSP Act upon completion of the wider review, as well as planned changes to linked legislation such as the AML/CFT Act.

APPENDIX 1: RELEVANT FINANCIAL ACTION TASKFORCE RECOMMENDATIONS

Relevant FATF Recommendations

F. POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES, AND OTHER INSTITUTIONAL MEASURES

REGULATION AND SUPERVISION

26. Regulation and supervision of financial institutions

Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities or financial supervisors should take the necessary legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, or holding a management function in, a financial institution. Countries should not approve the establishment, or continued operation, of shell banks. For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes, and which are also relevant to money laundering and terrorist financing, should apply in a similar manner for AML/CFT purposes. This should include applying consolidated group supervision for AML/CFT purposes. Other financial institutions should be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, where financial institutions provide a service of money or value transfer, or of money or currency changing, they should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national AML/CFT requirements.

APPENDIX 2: FINANCIAL SERVICES UNDER THE FSP ACT

In the FSP Act, financial service means any of the following financial services:

- a financial adviser service
- a broking service (including a custodial service)
- being a licensed NBDT, as defined in the Non-bank Deposit Takers Act 2013
- being a registered bank
- keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons
- being a creditor under a credit contract
- 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 an FMC offer as the issuer or offeror of the financial products:
- acting in any of the following capacities in respect of regulated products or financial products offered under an FMC offer
    - as an issuer
    - as a supervisor
    - as an investment manager
- a licensed market service
- acting as a custodian in respect of a registered scheme or a discretionary investment management service provided by a DIMS licensee
- operating a financial product market
- changing foreign currency
- trading financial products or foreign exchange on behalf of other persons
- providing forward foreign exchange contracts
- acting as an insurer
- providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations, other recommendations by FATF, or other similar international obligations that are consistent with the purpose of this Act.

APPENDIX 3: SUMMARY OF KEY THEMES FROM SUBMISSIONS RECEIVED ON THE FINANCIAL SERVICE PROVIDERS REGISTER

Themes from Issues Paper submissions	Summary of submissions responses
Submitters consider the current Register is not widely known about or useful to consumers	Submissions commonly questioned the Register's effectiveness as a resource for consumers to make informed decisions about financial advisers because: • public awareness of the Register is low, and • the information provided is not well understood by consumers and is limited. Better promotion of the Register was seen as needed and potentially moving it to a portal more recognised by consumers and tailored to providing consumer-centric information (eg. www.consumeraffairs.govt.nz) was suggested. Some argued that the Register had fulfilled its original purpose and that changing the Register to be more consumer friendly still may not make it a place that consumers would gravitate to when looking for an adviser. *'We don't believe the Register is currently fulfilling its intended role of providing consumers with easy access to useful information about advise'' – AMP* *'There is opportunity to raise the public awareness of the FSP register. This should form part of the financial capability framework' – ASB* *'The current Register is of very limited use for consumers and in our experience rarely visited. It should in fact be an important tool in helping to identify an appropriate adviser'– IBANZ*
More detailed information about advisers and greater searchability would make the Register more useful for consumers and advisers	As above, the Register is not generally seen as fully fulfilling its intended role of providing consumers with easy access to useful information about advisers. It is seen as having greater utility for regulators than consumers. In light of this, numerous suggestions were made by submitters to improve usability of the Register for consumers. Greater search functionality and more detailed, comparable information were seen as more consumer friendly features. Common suggestions were to add relevant professional qualifications and CPD, disciplinary record, and products & services they can provide (and any restrictions on those). Submitters also suggested asking consumers what details they would like to see on the Register.

	Some submitters also saw value in putting areas of expertise/competency, remuneration information, adviser business statements and the region an adviser served on the Register. Plain-English or readily understood information was favoured, rather than using current classifications that consumers might find confusing (eg. AFA & RFA; Category 1 or 2 products). Using the Register as the place for primary disclosure (potentially replacing current disclosure statement requirements, and reducing compliance costs) was also flagged as an opportunity. The Australian Financial Advisers Register was noted by some submitters as a good template. '*It needs more information about the adviser - who they are and how they can help me' - Consumer survey respondent* *'We support the Register including additional information of value to consumers: our proposed financial adviser's qualifications, any disciplinary record, any areas of specialisation' - Financial Services Council*
Concerns raised that the Register creates the impression that all providers are licensed or regulated	Some submitters raised concerns that simply including financial service providers on a public register can give consumers an impression that they are regulated, and hence may give a false sense of confidence or protection. *'…(The Register) accords a legitimacy and degree of government/regulatory approval' - OM Financial Limited* *'I think it should be made clear that it is for registration purposes only - it doesn't mean people should rely on these services' - Consumer survey respondent.* *'Most people believe the threshold and monitoring required to be on the Register is far greater than the simple administrative process it actually amounts to' - Consumer survey respondent*
Some submitters suggested the Register should be taken out of the public domain	As above, some submissions proposed enhancements to the Register to make it more useful to consumers. Others suggested the Register should not be used as a consumer tool and should be removed from the public domain. These submitters wanted to see the Register as a regulatory tool, so it wasn't complicated by also catering to consumer needs. Some argued banning public access to the Register would solve misuse problems. *'The Register shouldn't be available to the public, and it's not necessary for it to be so. When originally conceptualised the Register was intended to be just for regulatory purposes, and to comply with FATF requirements in that regard. That should be its only goal' – OM Financial Ltd*
The misuse of the Register by corrupt offshore financial service providers is seen as a significant risk	The majority of submissions saw misuse of the Register by offshore financial service providers as a significant risk, and a matter of priority. These submitters felt that overseas entities are using the Register to achieve a

	degree of respectability which can undermine the confidence among consumers in others on the Register. A number of submitters argued that the registration process for offshore entities should be reviewed and that the level or registration and compliance should be higher for offshore providers to ensure they can meet the same standard as domestic providers. This could include the requirement of offshore entities to establish regulatory approval in their home country before registering in New Zealand, creating higher tests for entities to show they are actively carrying out business with New Zealand clients, and requiring an indemnity bond in order to operate here. However, it was also recognised a balance was needed between a harder line to reduce undesirable offshore users of the Register, and keeping compliance manageable for desirable offshore investors and advisers. A smaller number of submitters suggested more fundamental changes to align the FSP and the Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) Acts given their shared purposes in helping New Zealand meet its Financial Action Taskforce Recommendations obligations. Suggestions included aligning the 'financial service provider' and 'financial institution' definitions in the Acts and requiring anyone on the Register to comply with AML/CFT reporting entity requirements. A stronger inter-agency approach (including the IRD) was also seen as helping reduce the risk. *'There can be no question misuse of the NZ FSPR by offshore entities is a significant risk to NZ's reputation as a well regulated jurisdiction and potentially ultimately also to legitimate NZ businesses and financial service providers through association' – Gareth Vaughan, editor of www.interest.co.nz* *'The Register should be enhanced to identify the FSP as an offshore entity with associated warnings. Any promotion of the products of offshore entities should be required to contain the same warning' - NZFAA* *'The scope of the registration requirements under (Section 8A) the (FSP) Act should be amended to introduce further criteria to be satisfied, relating to actually carrying on business in NZ or having a substantive place of business here. We believe this would better protect the integrity of the Register, in addition to the recently added powers to decline registration or deregister' – Kensington Swan*
Introduce stronger registration requirements	More stringent requirements prior to registration were suggested by some submitters to raise the quality of registrations and filter out players before they do damage. Suggestions for additional minimum requirements included relevant qualifications, competency, criminal background checks, place of businesses (whether in NZ or offshore) and level of indemnity cover. A smaller group of submitters thought current registration standards were sufficient.

	'Appropriate minimum registration requirements (be introduced) to mitigate the risks that a registered entity is unable to meet restitution or compensation payments that might arise in the event of an adverse ruling' - IFA *'A person subject to an order under s108 of the Credit Contracts and Consumer Finance Act (CCCFA) is already disqualified under s14(2)(c) of the FSP Act. Consideration should be given to extending s14(2) of the FSP Act to disqualify any person who has been convicted of an offence against the Commerce Act 1986, CCCFA and/or the Fair Trading Act 1986 (FTA), regardless of whether that person is subject to an order under s108 of the CCCFA. This would better protect consumers and help ensure the provision of quality financial advice' - Commerce Commission*
General support for stronger compliance	A number of submitters suggested that the FMA and the Registrar should have more teeth in dealing with non-compliance in order to ensure the Register's integrity. There was general support for the recent changes requiring New Zealand or Australian based directors and an increase in the FMA's powers to decline registration or de-register foreign controlled persons not conducting business in or from New Zealand. Some respondents thought regulators did need some further tools and that current tools could be used more to prevent and police inappropriate registrations. Suggestions included an increased and wider range of penalties that are actively enforced (eg. fines for lesser non-compliance offences), greater publication of information on non-conforming parties (eg. publicising deregistration notices more widely to the general public and recording breaches in registration provisions on the Register), and better due diligence by regulators prior to registration. Deregistration needs to be balanced with powers to make it easier to exclude or remove certain entities from the Register, and better course to redress for complainants. Ongoing accuracy checks by the regulator once an adviser is registered were also suggested. Some thought professional bodies also had a role to play in disciplining advisers and holding and monitoring disciplinary information to support what went on the Register. *"Deregistration is effective, but remains an ambulance at the bottom of the cliff approach" – Issues paper submitter*