

The Chair  
**CABINET ECONOMIC DEVELOPMENT COMMITTEE**

**REVIEW OF FINANCIAL PRODUCTS AND PROVIDERS: REGISTRATION OF  
FINANCIAL SERVICE PROVIDERS**

**PROPOSAL**

- 1 This paper seeks agreement to the introduction of a registration system for financial service providers to be implemented as part of the Review of Financial Products and Providers (the Review).

**EXECUTIVE SUMMARY**

- 2 A registration system for financial service providers would identify financial service providers, allow more effective monitoring and evaluation of the financial system, provide easy access for consumers to information about financial service providers and their products, give some assurance about the integrity of people running financial institutions and assist in meeting New Zealand's anti-money laundering obligations under the Financial Action Task Force (FATF) Recommendations.
- 3 The proposed registration system will check whether the controlling shareholders, directors and senior management of entities providing financial services have a record of having engaged in relevant criminal activities or are an undischarged bankrupt, or are the subject of a director/management ban under companies or securities legislation. Entities carrying out activities within the FATF definition of financial institution will be required to be registered. I propose that the person holding the office of the Registrar of Companies will have responsibility for establishing and maintaining the register. The Registrar will undertake enforcement functions in relation to breaches of the registration requirements.
- 4 Given the related roles of the regulatory agencies in regulating the financial sector, it is proposed that the Registrar have the power to share information with the Securities Commission, the Reserve Bank, and other agencies that carry out anti-money laundering supervisory and enforcement functions, such as the Financial Intelligence Unit of the Police.

**BACKGROUND**

- 5 Currently, there is no comprehensive way of identifying or monitoring providers of financial services. Data identifying all providers of financial services is important to regulators for the purpose of identifying risks in the sector and people who are not complying with the statutory requirements. Data is also necessary so that

market participants (i.e. business analysts, intermediaries and consumers) can access information on a financial services provider. Registration requirements for some providers and for some financial products do exist under specific legislation, for example, the Building Societies Act 1965, the Friendly Societies and Credit Unions Act 1982, and the prospectus registration requirement under the Securities Act 1978. However, these registration systems have been put in place for a range of purposes and do not provide complete coverage of financial service providers and the services they provide. As the information available on those registers does not identify the nature of the financial services an entity provides, it is difficult to build up a complete picture of a provider's details and activities.

- 6 In addition, the current regulatory framework does not provide assurance to consumers and investors that financial service providers have not been convicted of financial crimes or other misconduct. This increases the risk of unfair, fraudulent or negligent misconduct in relation to financial service providers. I note also that New Zealand is not compliant with Recommendation 23 of the Financial Action Task Force's 40 Recommendations on Money Laundering which provides for the implementation of measures to prevent criminals from controlling or managing financial institutions and to subject directors and senior managers of some financial institutions to fit and proper evaluations.
- 7 New Zealand is obligated through its membership of FATF to implement the FATF 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing. New Zealand is not currently compliant with the requirements in the Recommendations for "financial institutions" (as defined by FATF) to be registered or licensed. Cabinet agreed in principle on 20 October 2004 that financial institutions should be subject to monitoring for anti-money laundering compliance in accordance with the FATF Recommendations [POL Min (04) 25/8 refers]. Subsequently Cabinet agreed on 3 August 2005 that one of the objectives of the Review is to ensure closer compliance with FATF Recommendations [POL Min (05) 18/3 refers].
- 8 The FATF definition of "financial institution" includes entities not covered by the Review. Accordingly it is proposed that the register covers a broader range of entities than those within the scope of the Review. Any specific registration requirements for entities outside the Review will be addressed through the FATF Compliance Review which is being led by the Ministry of Justice.
- 9 The discussion document setting out the registration proposals was one of the nine papers considered by the Cabinet Economic Development Committee on 23 August 2006 [EDC Min (06) 13/7 refers].
- 10 Submissions on the Ministry's discussion document generally supported the proposal for a registration system. Submitters noted that the Companies Office already has the infrastructure and expertise for the proposed registration system. Submitters also indicated that it was important to clearly delineate the functions and powers of the regulators and ensure that it is clear to financial services providers which regulator they need to deal with in a given situation and to

ensure that there is no duplication in the requirements between registration and licensing.

#### COMMENT

- 11 This paper outlines a package of proposed measures which would set up and implement a registration system for financial service providers (as defined in paragraph 18 of this paper). The outcome sought is a comprehensive system that will contribute to promoting confidence in the financial sector. The proposed registration system will also contribute to compliance with FATF recommendation 23 which requires New Zealand to have a comprehensive supervisory framework for “financial institutions”.
- 12 The purposes of the proposed register are: to identify financial service providers and ensure that the controlling shareholders, directors and senior managers are subject to criminal checks, to enable members of the public to access information on the products and services provided by the entity, and to provide information about which consumer dispute resolution scheme the entity belongs to; and to assist the registrar and other regulators to enforce legislation regulating the financial sector.
- 13 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 anti-money laundering and countering the financing of terrorism (AML/CFT) 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.
- 14 The proposed registration system will require that the controlling shareholders, directors and senior management of entities providing financial services meet “negative assurance criteria”; that is, the registrar will check that they have no record of relevant criminal activities or are not an undischarged bankrupt, or are not the subject of a director/management ban under companies or securities legislation. The system will also link in to other parts of the financial sector regulatory framework aimed at ensuring that persons managing or controlling some kinds of financial service providers (e.g. trustees, non-bank deposit-takers) meet “fit and proper” criteria regarding expertise and capability. Agreement to the imposition of these “positive assurance” requirements will be sought in the accompanying papers relating to the relevant areas, for example the requirements for trustees, and in later papers on other areas of the Review.
- 15 In conjunction with the proposals in this paper, it is anticipated that operational steps will be taken to give the appearance of a seamless register combining information an entity has provided under various pieces of legislation, such as the Companies Act 1993, the Building Societies Act 1965 or the Securities Act 1978. Where information is available on existing registers, the operational objective is for entities not to be required to provide duplicated information, but for the information to be available to users from a single online source. From the consumer’s perspective, this easily accessible source of information on a financial service provider and the range of services it provides would include

information such as the entity's constitution, trust deeds, prospectuses or other disclosure documents, details of directors, and financial reports, where these documents or reports are required.

- 16 The proposed registration process will be implemented to be as flexible as possible, with the aim that an entity can provide the necessary information to one regulatory agency, and not have to meet duplicated requirements (as the registrar and regulators will have the ability to share information and a requirement to cooperate in the process).
- 17 I propose that there be an appropriate transitional period to allow providers the time to become familiar with the requirements and to take necessary steps to comply with them.

### **What entities will be required to be registered?**

- 18 Entities carrying out activities falling within the FATF definition of "financial institution" will be required to be registered on the proposed register. Entities which are included in the definition are:
  - Banks;
  - Friendly societies;
  - Credit unions;
  - Building societies;
  - Industrial and provident societies;
  - Finance companies;
  - Issuers of equity and debt securities;
  - Issuers of collective investment schemes;
  - Trustees supervising these issuers;
  - Insurers;
  - Platform and portfolio service providers and custodians;
  - Investment brokers;
  - Dealers in securities and futures contracts;
  - Lending businesses;
  - Financial leasing businesses;
  - Money or value transfer services (e.g. money remittance);

- Money and currency changers.
- 19 As noted in paragraph 8 above, this list covers a broader range of entities than those within the scope of the Review. The reason for this is that the Review is being coordinated with other reviews being undertaken in the financial sector, in particular the review of New Zealand's compliance with the FATF Recommendations. In the case of insurers, the FATF definition relates to life and investment related insurance. The proposed registration system will apply, however, to all types of insurers.
- 20 The FATF definition of "financial institution" includes banks, which will come under the proposed anti-money laundering supervisory framework, discussed in a Ministry of Justice discussion document<sup>1</sup>. While banks will be included in the same registration system as other financial service providers, this will not alter the Reserve Bank's supervision functions in relation to banks under the Reserve Bank of New Zealand Act 1989.
- 21 It is not intended that the proposed registration system would cover those entities defined by the FATF as "designated non-financial businesses and professions". Examples of such entities are real estate agents, accountants and lawyers. The Ministry of Justice review of New Zealand's compliance with the FATF recommendations will deal with any issues relating to these businesses and professions.
- 22 The definition of "financial service provider" will be based on the FATF definition of "financial institution" subject to any variations in coverage of the anti-money laundering regime agreed through the FATF Compliance Review.
- 23 I propose that the register will also identify financial advisers. Details of the proposals for the regulation of financial advisers are discussed in the accompanying paper entitled "Financial Advisers – A New Regulatory Framework".

### **Categories of financial services**

- 24 As one of the purposes of registration is to enable identification of the range of financial services provided by an entity, entities will be required to specify the categories of services they provide, such as deposit taking, issuing collective investment schemes, providing superannuation products, acting as a trustee/statutory supervisor, or providing portfolio management services. The proposed category definitions are to be broad and will be determined according to the regulatory framework for the various parts of the financial sector. I propose that there be a regulation-making power requiring the categories to be specified in regulations. This will allow flexibility to deal with new financial products and services that become available over time, and to allow for the staged approach of the Review and the FATF Compliance Review.

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<sup>1</sup> [Anti-Money Laundering And Countering The Financing Of Terrorism: Supervisory Framework](#), October 2006

## Who will the Registrar be?

- 25 I propose that the Registrar of Financial Service Providers (the Registrar) will be the person holding office as the Registrar of Companies.

## Role of Registrar

- 26 I propose that the Registrar will be responsible for establishing and maintaining a register of financial service providers. As part of the registration procedure, the Registrar will carry out checks of applicants. The Registrar will check that the controlling shareholders, directors and senior management of entities applying for registration meet negative assurance criteria. The proposed criteria will require that no controlling shareholder, director or senior manager of a financial service provider:

- Is an undischarged bankrupt;
- Is a person who is prohibited from being a director or promoter of or concerned in the management of a company under the Companies Act 1993, Securities Act 1978, Securities Markets Act 1988 or the Takeovers Act 1993;
- Has been convicted of a crime involving dishonesty or fraud within the preceding five years, or has been convicted of a crime involving money laundering or financing of terrorism; and
- Is, or has been, subject to a confiscation or forfeiture order under the Proceeds of Crime Act 1991 or, in the event that it is enacted, such an order under the Criminal Proceeds (Recovery) Bill, currently before Parliament.

- 27 Where an entity wishes to provide a service which has additional regulatory requirements, for example, that it be licensed or meet specific criteria as to capacity, qualifications or experience, it will not be able to complete the registration process for that service until the relevant regulator (for example the Reserve Bank or the Securities Commission) advises the Registrar that the specific criteria have been met. An example of a service that has additional regulatory requirements is that provided by a trustee who supervises issuers of securities, as discussed in the accompanying paper entitled "Trustee Supervisory Model".

- 28 To enable the Registrar to perform the necessary functions, I propose that the legislation contains provisions that will allow the effective operation of the register, similar to those in the Companies Act 1993 and the Personal Property Securities Act 1999. These will include provisions in relation to delegation powers, the form and availability of the register, and the power to prescribe how documents are filed and any other necessary provisions for the proper administration of the register.

- 29 It is proposed that the Registrar also be responsible for removing entities from the register where notification is received from either an entity, the relevant regulator or a consumer dispute resolution scheme that the entity no longer meets the registration requirements. Entities will be obliged to notify the

Registrar where they cease providing financial services. The Securities Commission and Reserve Bank will be required to notify the Registrar if they make a decision that an entity is no longer licensed. Consumer dispute resolution schemes will be obliged to notify the Registrar if an entity resigns or is expelled from membership of the consumer dispute resolution scheme.

- 30 I propose that there be a regulation-making power to prescribe other matters related to registration such as forms, the information required for an application, how documents must be delivered, prescribing any fees and charges in relation to registration, and any other matters to enable the proper administration of the registration system. To meet the objective of providing an easily accessible means for consumers and market participants to find information on financial services providers and products, I do not intend that there be any fee for access to information on the register.

### **Information required for registration**

- 31 I propose that regulations will prescribe the information that is required in an application to register. This information will include the information necessary for the Registrar to carry out negative assurance checks.
- 32 I propose that the register will include the following information in relation to each entity:
- Name of entity;
  - Name of dispute resolution scheme to which the entity belongs (this is a requirement of registration and is discussed in the accompanying paper “Consumer Dispute Resolution and Redress”); and
  - List of categories of financial services provided (as prescribed in regulations).
- 33 If a financial service provider notifies the Registrar that it operates only at a wholesale level or does not have any dealings with consumers, the entity will not be required to belong to a dispute resolution scheme. Financial service providers will be required to confirm annually that the information they have provided is still correct or to make any necessary changes.
- 34 In addition to the annual information update, I propose that registered financial service providers will be obliged to notify the Registrar within a specified period of changes in the information they have provided with regard to details of their directors and senior management. The Registrar will be required to notify the financial service provider where a director or senior manager does not meet the negative assurance criteria set out in paragraph 26. The entity will then be required to advise the Registrar within a specified period (prescribed in the Act) of the action that has been taken to ensure that it meets the registration criteria. If the Registrar receives no notification within the required time period, the entity will be removed from the register.
- 35 A decision by the Registrar to refuse to register an entity or to remove an entity from the register will be subject to the right of appeal to the District Court.

## Information sharing provisions

- 36 Given the related roles of the regulatory agencies in regulating the financial sector, I propose that the Registrar have the power to share information, for the purpose of assisting in the exercise of financial sector regulatory functions, with the Securities Commission, the Reserve Bank, and other agencies that carry out anti-money laundering supervisory and enforcement functions, such as the Financial Intelligence Unit (FIU) of the Police. The regulatory agencies will have a duty to cooperate with each other in the performance of these functions. Decisions on the specific agencies involved will depend on the outcome of the Ministry of Justice FATF Compliance Review. The Registrar will also have the ability to use information communicated to it by the other agencies in the performance of its functions and duties.
- 37 It is likely that other regulatory agencies such as the Securities Commission, the Reserve Bank and the FIU may become aware of entities that are not registered while carrying out their monitoring and enforcement roles. This information would be passed to the Registrar under the information sharing provisions, enabling the registrar to undertake the appropriate enforcement action.

## Searching the register

- 38 Purposes for searching the register will be specified in the Act and will include the purposes of determining whether an entity is registered, obtaining information on an entity and its activities, obtaining information about how to contact an entity, and for assisting a regulator in exercising powers under the proposed legislation or other related legislation. Searches for personal information that are not carried out in accordance with these purposes will be an interference with the privacy of an individual under the Privacy Act 1993.

## Enforcement and Offence provisions

- 39 I propose that it will be an offence to provide financial services without being registered or to falsely hold oneself out as being registered.
- 40 The Registrar will have any necessary inspection powers to enable determination of compliance with the Act or detect contraventions.
- 41 I propose that it will be an offence for a person to fail to comply with an inspection requirement, or to obstruct or hinder the Registrar while exercising the inspection powers.
- 42 I propose that there will be offence provisions for failure to comply with registration requirements, including but not limited to:
- Failure by an entity to notify the Registrar of changes in the information required to be provided;
  - Provision by an entity of financial services under a category other than those it has specified to the Registrar; and

- Supplying false or misleading information to the Registrar.

- 43 The Registrar will undertake enforcement functions in relation to the offences.
- 44 I propose a maximum penalty of up to two years imprisonment or a fine not exceeding \$100,000 for individuals; up to \$300,000 fine for a body corporate for the most serious of the proposed offences, with lower penalties for less serious offending. It is imperative that these penalties are set at a level which is a meaningful punishment and deterrent. The penalties above will achieve that purpose. They are similar to penalties found in the Companies Act 1993, the Securities Act 1978 and the KiwiSaver Act 2006.

### **Consultation**

- 45 In preparing this paper, the following departments and government agencies have been consulted: the Department of the Prime Minister and Cabinet, the Treasury, the Reserve Bank, the Ministry of Consumer Affairs, the Ministry of Justice, the Securities Commission, the Inland Revenue Department, Department of Labour, Internal Affairs, State Services Commission, Retirement Commission, Ministry of Social Development, Ministry of Foreign Affairs and Trade, Ministry for the Environment, Te Puni Kokiri, Customs Department, Department of Building and Housing and the Office of the Privacy Commissioner.
- 46 A discussion document was released in August 2006 as one of nine documents in the review of Financial Products and Providers. The submissions received on the discussion document were considered in drafting this paper.

### **Fiscal Implications**

- 47 Implementation of the proposals in this paper will result in increased costs for the Companies Office. The fiscal implications of the proposals are discussed in the accompanying paper "Reviews of Financial Products and Providers and Financial Intermediaries – Overview Paper".

### **Human Rights**

- 48 Overall the proposals in the Cabinet paper do not appear to be inconsistent with the New Zealand Bill of Rights Act 1990, or the Human Rights Act 1993. However, if any issues do arise officials from the Ministry of Economic Development and Ministry of Justice will work together to ensure that the legislation is consistent with the Bill of Rights Act. A final view as to whether the proposals will be consistent with the Bill of Rights Act will be possible once the legislation has been drafted.

### **Legislative Implications**

- 49 The proposals recommended in this paper will require new legislation. The proposals will be contained in a Financial Service Providers Registration and Dispute Resolution Bill (refer to the "Overview" paper).

## Regulatory Impact Analysis

50 The Ministry of Economic Development confirms that the principles of the Code of Good Regulatory Practice and the regulatory impact analysis requirements, including the consultation RIS requirements, have been complied with. A RIS was prepared and the Regulatory Impact Analysis Unit considers the analysis and the RIS to be adequate. A draft RIS was circulated with the Cabinet paper for departmental consultation purposes.

## Publicity

51 Once Cabinet has reached a decision on the recommendations in this paper and the other accompanying papers on the Review of Financial Products and Providers, I will release a media statement to signal to the public the Government's policy decisions in this area. Targeted consultation will then be undertaken on a draft of the legislation later this year so that stakeholders with expertise in the financial sector area will have a chance to comment on the proposals at a more detailed level.

## Recommendations

52 It is recommended that the Committee:

- 1 **Note** that, subject to further Cabinet report backs, the provisions will be included in a Financial Service Providers Registration and Dispute Resolution Bill to be passed in 2008.
- 2 **Agree** that the following proposals be incorporated in the Bill, which will implement a registration system for financial service providers as part of the Review of Financial Products and Providers:
  - 2.1 A public register of financial service providers who are providing defined financial services, and financial advisers, be established;
  - 2.2 The Registrar of Financial Service Providers be the person holding office as the Registrar of Companies;
  - 2.3 Financial service providers providing defined financial services be required to be registered in order to carry on business in New Zealand as a financial service provider, with the definition to be based on the Financial Action Task Force definition of "financial institution", subject to any variations in coverage of the anti-money laundering regime agreed by Cabinet in decisions on the Financial Action Task Force Compliance Review;
  - 2.4 The Registrar be responsible for keeping and maintaining a register of financial service providers;
  - 2.5 The Registrar be responsible for carrying out negative assurance checks on the controlling shareholders, directors

and senior managers of financial service providers, and those financial service providers which do not meet the negative assurance checks will not be registered;

- 2.6 Appropriate provisions be included for appeals against decisions of the Registrar;
- 2.7 Appropriate provisions be included for the effective operation of the register, based on the Personal Property Securities Act 1999 and on the Companies Act 1993;
- 2.8 The Registrar be responsible for removing financial service providers from the register when notified that the provider no longer meets the registration criteria; and
- 2.9 That the register will include the following information about each entity:
- Name of entity;
  - Where applicable, name of dispute resolution scheme the entity belongs to (this is a requirement of registration and is discussed in the accompanying paper “Consumer Dispute Resolution and Redress”); and
  - List of categories of financial service provided (as prescribed in regulations).
- 2.10 Financial service providers be obliged to notify the registrar of changes to the information they are required to provide;
- 2.11 Financial sector regulatory agencies be empowered to share information, for the purpose of assisting in the exercise of financial sector regulatory functions;
- 2.12 Financial sector regulatory agencies have a duty to cooperate with each other in the performance of financial sector regulatory functions;
- 2.13 The Registrar to have any necessary inspection powers to detect contraventions and undertake enforcement functions;
- 2.14 There be offences for breaches of the registration requirements, including but not limited to:
- 2.14.1 Providing financial services without being registered or to falsely hold oneself out as being registered;
  - 2.14.2 Failure to comply with an inspection requirement, or to obstruct or hinder the Registrar while exercising the inspection powers;

- 2.14.3 Failure to notify the Registrar of changes in the information required to be provided;
  - 2.14.4 Providing financial services under a category other than the categories that it has specified to the Registrar; and
  - 2.14.5 Supplying false or misleading information to the Registrar.
- 2.15 There be a maximum penalty of up to two years imprisonment or a fine not exceeding \$100,000 for individuals; up to \$300,000 fine for a body corporate for the most serious offences, with lesser penalties for the less serious offences.
- 3 **Agree** that the legislation include regulation-making powers to provide for:
- 3.1 Categories of financial service that must be specified by financial service providers when applying for registration as a financial service provider;
  - 3.2 Prescription of any necessary forms, information required for an application for registration or for periodic updating of information, method of delivery of documents and other matters to enable the administration of the registration system;
  - 3.3 Prescription of any fees and charges in relation to registration; and
  - 3.4 Any other regulations necessary for the administration of the register.
- 4 **Invite** the Minister of Commerce to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendations.
- 5 **Agree** to delegate to the Minister of Commerce the power to make decisions on minor issues that arise during the drafting process.

Hon Lianne Dalziel  
**Minister of Commerce**

# **Regulatory Impact Statement**

## **EXECUTIVE SUMMARY**

An effective and consistent regulatory framework for the financial sector that promotes confident consumers and institutions requires that regulators and consumers are able to identify which entities are providing which financial services. New Zealand does not comply with the Financial Action Task Force's (FATF) Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) that there be an effective supervisory framework to ensure financial sector compliance with AML/CFT requirements. Currently there are registration requirements for some providers (such as banks, building societies and credit unions) and products (such as prospectuses) under specific legislation, but this is not comprehensive and does not identify what financial services an entity provides. The preferred option is for the Companies Office to register defined "financial service providers" and undertake negative assurance checks. Financial advisers will also be identified on the register. The Companies Office would cooperate with other financial sector regulators to ensure entities are meeting the relevant regulatory requirements.

## **ADEQUACY STATEMENT**

The Regulatory Impact Analysis Unit has reviewed the RIS and considers the RIS is adequate according to the adequacy criteria.

## **STATUS QUO AND PROBLEM**

Currently, there is no comprehensive way of identifying or monitoring providers of financial services or financial advisers. Data identifying all providers of financial services is important to regulators for the purpose of identifying risks in the sector and people who are not complying with the statutory requirements. Data is also necessary so that market participants (i.e. business analysts, intermediaries and consumers) can access information on a financial services provider.

Financial service providers with existing registration requirements are: banks, superannuation schemes, building societies, industrial and provident societies, friendly societies, credit unions and contributory mortgage brokers. Financial products with registration requirements include prospectuses under the Securities Act 1978, and trust deeds in relation to unit trusts under the Unit Trusts Act 1960.

MED estimates that virtually all financial service providers are companies or entities that are already required to register with, and provide information to, the Companies Office under other legislation such as the Companies Act 1993 or the Building Societies Act 1965 or the Friendly Societies and Credit Unions Act 1982. However, the current requirements are not designed to identify what type of business an entity is and hence do not give any information about financial services an entity provides. It is difficult for consumers and market participants to find information about financial service providers and the services they provide as there is not a single place where all the information can be accessed and consumers are not likely to be aware of where the information may be found. Data identifying all providers of financial

services is important to regulators for the purpose of identifying risks in the sector and people who are not complying with the statutory requirements.

The Financial Action Task Force (FATF) is an international body that sets standards for anti-money laundering and countering the financing of terrorism. New Zealand is a member of the FATF and is committed in principle to compliance with its standards.

In terms of FATF Recommendation 23, countries should ensure that financial institutions are subject to adequate regulation and supervision for anti-money laundering purposes. Under this recommendation New Zealand is required to have a comprehensive supervisory framework for financial institutions. Cabinet agreed in-principle in October 2004 that the financial sector be monitored for anti-money laundering compliance in accordance with FATF recommendations.

The FATF recommendations also require the necessary regulatory measures be taken to prevent criminals from owning a significant or controlling interest or holding a management function in a financial institution.

While there are general measures aimed at preventing criminals controlling or acquiring companies in NZ, there are no specific measures to ensure that the directors and management of financial sector entities meet “negative assurance” requirements ( i.e. they have not been convicted of relevant financial crimes), in accordance with the FATF recommendations.

It is not known to what extent money laundering or terrorist financing occurs in New Zealand. It is believed that the level of risk is low, particularly in relation to terrorist financing; however, the current regulatory regime for the financial sector makes such claims difficult to substantiate. Failure to comply with the FATF standards may attract money launderers and terrorist financiers to New Zealand. Non-compliance would also have a very negative impact on New Zealand’s reputation as an international citizen. The risks associated with non-compliance include:

- possible increased cost of borrowing overseas for both the government and private sector, as overseas lenders perceive New Zealand as a greater financial risk and demand a bigger margin to compensate;
- difficulties (in the form of increased costs or lost business opportunities) for New Zealand companies in doing business overseas, as other countries may have laws that discriminate against non-compliant countries;
- overseas investment in New Zealand may be reduced because of investors’ perception of increased risks, or legal restrictions in the investors’ home jurisdictions;
- difficulties in trade negotiations at a government-to-government level, as foreign governments may be reluctant to extend trading privileges to non-compliant countries;
- impacts on foreign relations as foreign governments discriminate against non-compliant countries; and
- potential loss of FATF membership.

The current regulatory regime does not enable government or the public to identify all financial sector providers or their services, does not comply with the FATF Recommendations and does not meet the objectives set out below. The information

available on the range of financial services an entity provides is not easily accessible to investors and is not comprehensive. The system has led to negative comments on New Zealand's level of compliance with international standards. Therefore, it is not appropriate to maintain the status quo.

## **OBJECTIVES**

The objectives are:

- To identify the entities providing defined financial services in the New Zealand market.
- To provide an easily accessible means for investors/potential investors, intermediaries, analysts and other market participants to find information on financial services providers and the range of services they provide.
- To ensure that the directors and management of financial services providers meet “negative assurance criteria”; that is, they have no record of relevant criminal activities or adverse regulatory judgments such as having been bankrupt, or having been the subject of a director/management ban.
- To comply with the relevant international principles and standards.

The criteria against which options to meet the objectives have been assessed are:

- Effectiveness in meeting the objectives
- Level of compliance costs for business
- Avoidance of duplication
- Fit with existing or proposed regulatory function
- Efficiency of use for regulatory authorities
- Efficiency of use for investors/public.

## **ALTERNATIVE OPTIONS**

The range of types of financial services and the entities that provide them is very varied. Some parts of the sector do not have any self regulatory or other professional or industry organisation, while others do. To meet the key objective of the review of financial products and providers of an effective and consistent regulatory framework, and also to meet the FATF recommendations, we did not find any feasible alternative option to a registration system.

## **ALTERNATIVE REGISTRATION SYSTEMS: DIFFERENT AGENCIES PERFORM THE REGISTRATION FUNCTION FOR DIFFERENT FINANCIAL SERVICE PROVIDERS**

This option involved the various financial sector regulators each maintaining a register for the entities they supervise. For example, the Reserve Bank would perform a registration function for banks and other entities for which it has prudential responsibilities and the Securities Commission would register entities such as collective investment scheme operators and trustees, and the Companies Office would potentially register other issuers. This option would meet the objective of identifying some entities but would not cover all the entities falling under the FATF definition. It would mean duplication of registers, low level of fit with the existing regulatory functions of the Reserve Bank and Securities Commission, greater compliance costs and inability to meet the objective of an easily accessible source of information for investors and market participants.

### **PREFERRED OPTION**

The preferred option is that the Companies Office performs the registration function for all defined “financial service providers”. The definition will be based on the FATF definition of “financial institution” and will include: banks, friendly societies, credit unions, building societies, industrial and provident societies, finance companies, issuers of equity and debt securities, issuers of collective investment schemes, trustees supervising these issuers, insurers, platform and portfolio service providers and custodians, investment brokers, dealers in securities and futures contracts, lending businesses, financial leasing businesses, money or value transfer services (e.g. money remittance), money and currency changers. The register will also provide a means of identifying financial advisers.

This will involve the registrar establishing and maintaining a register, receiving applications for registration, carrying out criminal checks with the police on controlling shareholders, directors and senior managers and carrying out enforcement functions for breaches of registration requirements. The registrar will need to cooperate with other regulators such as the Reserve Bank and the Securities Commission, as for some financial services there are additional regulatory requirements that must be met before an entity can be registered.

It is intended that from a financial service provider’s perspective there will be a seamless register combining the information they provide to register as a company (or other form such as a building society or friendly society) with a small amount of additional information.

Giving the Companies Office the registration function would mean efficiencies could be gained and compliance costs minimised for businesses, as they would have to deal with only one registration body, and there would not be a duplication of requirements to provide registration information.

This option will have the advantage of reducing the time needed for an entity to become familiar with the financial service provider registration processes, as they will already be familiar with Companies Office registration and filing processes. Any registration fees for providers will be in addition to their existing registration (eg company) registration fees, will be set by regulation and will be calculated using the same models as other business registry fees. It is likely that there will be a fee for financial service provider registration (which is likely to cover the police checks, the Companies Office checks, provision of information to financial service providers on the requirements, contact centre, compliance and enforcement). Potentially there may be a fee for filing an annual update (which may in part cover contact centre, compliance, enforcement and any checks which may be required on an annual basis). However, there is no fee under the Companies Act for a company to file an online annual return and this may also be the case for the annual update of information by a financial service provider.

An estimate for a possible one-off registration fee for an entity (apart from a financial adviser) would be in the region of \$500 - \$800. This assumes that the costs are to be fully third party funded and on the basis of approximately 2000 registrations. There are various ways fees could be charged and this will need to be worked through over the next couple of months as the legislation develops. The Companies Office will apply all the necessary Treasury guidelines and approved costing models in working through the funding and fee structure. Cabinet approval will be sought for the regulations setting the fees.

While it is proposed that financial advisers will be identified on the register, the approved professional body that the adviser belongs to will be responsible for providing the adviser's details to the registrar and covering the costs associated with this, including any checking of the adviser. The costs for this will be determined by the costs incurred by the approved professional body and will not be the same as that indicated for registration of the financial service providers unless the advisor is also a provider of defined financial services. A financial adviser is defined as an entity which gives financial advice on financial products and investment and savings decisions to members of the public.

For the entities outside the Review of Financial Products and Providers that will be required to be registered to meet the FATF Recommendations, consideration of the impacts on them and any measures to minimise compliance costs on them will be included in the FATF Compliance review being led by the Ministry of Justice.

The preferred option results in a separation between the registration function and the regulatory or supervisory function. For example, for providers supervised by the Reserve Bank, it separates registration from prudential and AML/CFT supervision, and for providers supervised by the Securities Commission, it separates registration from market conduct and AML/CFT supervision. However, the costs from providers dealing with two regulatory agencies can be minimised by ensuring good information sharing and processes to ensure registration and any qualitative assessment carried out by the regulator work effectively, as well as by undertaking work to raise public awareness of where to find information about financial services providers, and of the respective roles of the Companies Office and regulators.

Information sharing processes between the Companies Office, the Reserve Bank and the Securities Commission already exist, but the volume of information sharing will increase with the implementation of these proposals. The Reserve Bank and Securities Commission have done some work in estimating the overall cost of their additional regulatory functions, but have not separated out the information sharing processes.

Apart from the Companies Office, no other agency currently has the equivalent existing systems, technology and skills able to be so easily adapted for a new registration system for financial service providers. This option would therefore involve the lowest costs for Government, as it could build on existing systems rather than creating a new registration system. The registration role will also include a negative assurance check. The Companies Office will check that the directors, senior managers and controlling shareholders are not on the list of undischarged bankrupts, or on the list of persons banned from being a director or concerned in the management of a company, and will carry out a police check for convictions for specific crimes. The Companies Office currently does this sort of check for motor vehicle traders.

Costs to the Companies Office from this option include the cost of setting up and maintaining the register including carrying out the necessary checks, an educational role to ensure financial service providers are aware of the requirements, and an enforcement role for breaches of registration requirements. The Companies Office's indicative estimates of the cost of carrying out these functions are:

	08/09	09/10	10/11	11/12	Ongoing
<b>Vote Commerce</b>	\$M	\$M	\$M	\$M	\$M
Ministry of Economic Development – additional Companies Office functions	0.1 – 0.4	0.9 – 1.2	0.8 – 1.5	0.8 – 1.5	0.8 – 1.5
Associated capital expenditure	0.35 – 1.0	0.65 – 2.0			

As noted above, these costs could be reduced if there is third party funding, which will be considered when approval is sought for the detailed funding proposals, to be reported back to Cabinet by 30 November 2007.

From the consumer's perspective, the registration system will provide a "one-stop shop" where they can access a range of information on an entity, such as the services it provides, copies of disclosure documents, and where to seek redress if they have a complaint. It is not intended that there be any fee for a consumer to access information on the register.

The preferred option will meet the public policy objectives set out above.

## **IMPLEMENTATION AND REVIEW**

To implement the proposal, legislation will be required. The necessary provisions will be part of the Financial Service Providers Registration and Dispute Resolution Bill to be passed in 2008.

It is intended that the register be in place in 2010. There will be a transitional period, intended to be two years, to allow those affected time to ensure compliance.

In addition, the Companies Office will need to undertake the necessary technical and operational work to enable information on the new register and on existing registers, for example those under the Companies Act, Building Societies Act and Securities Act to be available from a single online source. The Companies Office will be responsible for publicising the registration requirements so that entities providing financial services are aware of the requirements.

A privacy impact assessment has been commissioned to ensure that areas such as information sharing provisions, which are intended to minimise compliance costs, are consistent with information privacy principles. Officials will work with the Office of the Privacy Commissioner to ensure consistency of the legislation with the Privacy Act 1993 during the drafting process.

## **CONSULTATION**

The proposals were the subject of a discussion paper which was released in August 2006, along with other discussion papers in the Review of Financial Products and Providers. 139 submissions were received on the RFPP papers, of which 22 contained comments on registration. The submitters included associations representing various parts of the financial sector and individual businesses operating in the sector.

Submissions on the discussion document generally supported the proposal for a registration system. Submitters noted that the Companies Office already has the infrastructure and expertise for the proposed registration system. Submitters also indicated the need to clearly delineate the functions and powers of the regulators and ensure that it is clear to financial services providers which regulator they need to deal with in a given situation and that there is no duplication in the requirements between registration and licensing. These concerns are being addressed through the information sharing provisions and provisions for cooperation between regulators. They will also be addressed in the implementation of the operational aspects of the registration system.

The following government agencies have been consulted on the proposals in this paper: the Department of the Prime Minister and Cabinet, the Inland Revenue Department, Department of Labour, Internal Affairs, State Services Commission, Retirement Commission, Ministry of Social Development, Ministry for the Environment, Te Puni Kokiri, Customs Department, Department of Building and Housing and the Office of the Privacy Commissioner, Ministry of Foreign Affairs and Trade, Commerce Commission. No significant concerns were raised.

The Reserve Bank, Treasury, Ministry of Justice, Securities Commission and Ministry of Consumer Affairs are members of the inter-departmental working group contributing to the Review and their views are reflected in the proposals.