



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Discussion paper

Regulations to support measures to address the misuse
of the Financial Service Providers Register

April 2018

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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on **Tuesday, 15 May 2018**.

Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: <http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/regulations-to-support-the-financial-services-legislation-amendment-bill/consultation-on-addressing-misuse-of-the-financial-service-providers-register>. This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission.

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Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

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1 Introduction

Purpose of this discussion paper and context

1. This discussion paper seeks submissions on proposed regulations under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**). The regulations are being proposed in order to implement changes to the FSP Act contained in the Financial Services Legislation Amendment Bill (**Bill**).

What does the Bill do?

2. Following a review of the Financial Advisers Act 2008 and the FSP Act, the Bill creates a new regime for the regulation of financial advice and amends the regime for registration of financial service providers.
3. Part 2 of the Bill contains the changes to the FSP Act. The changes are primarily aimed at addressing misuse of the Financial Service Providers Register (**FSPR**), in order to protect the integrity and reputation of New Zealand's financial markets and legitimate New Zealand financial service providers.
4. The changes also clarify and update the categories of financial services in the FSP Act and sets out the registration processes for financial advisers and financial advice providers.
5. Annex 1 of this document contains a summary of the changes in the Bill.

What will the regulations cover?

6. Regulations are required in several areas in order to implement the FSP Act changes in the Bill:
 - a. The Bill amends the registration requirements so that they apply to persons in the business of providing financial services to persons in New Zealand above a prescribed threshold. Regulations will prescribe the threshold level. Proposals relating to the **prescribed threshold** are set out in **section 2** of this document.
 - b. Regulations will also set out information that providers must include if referring to their status as a registered financial service provider, and the circumstances in which the information must be included. Proposals in relation to **advertising limitations** are contained in **section 3**.
 - c. Existing regulations may need to be amended in relation to the information that the Registrar may require providers to submit, including to show that they are providing financial services to persons in New Zealand. Proposals in relation to the **information that applicants or registered providers may be required to provide** are set out in **section 4**.
 - d. Regulations will set out sub-categories of financial services under which financial service providers can register. Those regulations will generally reflect the approach proposed in the Consultation Paper that accompanied the exposure draft of the Bill.¹

¹ Consultation Paper – New Financial Advice Regime: The draft Financial Services Legislation Amendment Bill and proposed transitional arrangements, February 2017, page 30.

We will be working with the Companies Office and Financial Markets Authority (**FMA**) to refine the details of the sub-categories.

- e. We will also be working with the Companies Office and the FMA to identify other consequential changes to regulations, including changes to the content of the register. For example, regulation changes may be needed for the register to show information about the financial advisers that are engaged by a financial advice provider.
7. Regulations may also be needed in relation to the dispute resolution regime contained in Part 3 of the FSP Act. For example, it may be beneficial to make regulations to align certain aspects of the rules of the different dispute resolution schemes. We will be working with the dispute resolution schemes to identify any specific rules that need to be aligned.
8. We note that the proposals in this paper are independent of and separate to any proposals which may be made as part of a review of the Credit Contracts and Consumer Finance Act 2003 which is also underway.² That review assesses existing requirements on credit providers, one of which is the requirement for credit providers to register on the FSPR.

What's happening next?

9. The Bill is expected to be passed into law later in 2018 and come into force in stages. Most of the regulations cannot be made until the Bill is passed.
10. The current working timeframes are as follows:

Discussion paper on regulations released	April 2018
Submissions close on regulations discussion paper	15 May 2018
Policy of regulations announced taking into account feedback from consultation	Q3 2018
Supporting regulations made	Shortly after the Bill passes

11. Given the risk of damage to the integrity and reputation of New Zealand's financial markets, it would be desirable for the regulations to be made and in force soon after the Bill passes. This means that the timeframes for developing the supporting regulations are relatively tight.

What is this document for?

12. This document seeks feedback on the development of regulations to implement the changes in the Bill. Responses to this document will be used to further refine the content of the proposed regulations.
13. The focus of this consultation is on the regulations to be made under the Bill, rather than the policy in the Bill itself.

How to use this document

14. We have included suggested questions throughout the document but we welcome any other relevant information that you wish to provide.

² <http://www.mbie.govt.nz/info-services/consumer-protection/review-of-the-credit-contracts-and-consumer-finance-act>.

2 Threshold for registration & exemptions

Background

Financial service providers are required to be registered

15. Anyone who is in the business of providing a financial service is required to be registered on the FSPR.
16. The current purpose of requiring registration generally includes:
 - a. *Allowing the identification of all those in the business of providing financial services in New Zealand.* Identification assists the Registrar and other regulators with carrying out their regulatory functions. The public can also search the FSPR for a provider to see whether the entity is registered, what financial services they are registered for, any relevant licences they hold and their financial dispute resolution scheme.
 - b. *Assisting New Zealand to meet its 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 and countering financing of terrorism obligations.
 - c. *Facilitating the financial dispute resolution system which provides an avenue for consumers who have a dispute with their provider to seek redress in a quick, efficient and cost-effective manner.* While this is not an explicit purpose of registration as set out in section 9 of the FSP Act, dispute resolution membership is linked to the registration system. Under the FSP Act, all financial service providers who provide services to retail clients are required to be members of an approved dispute resolution scheme (DRS). The DRSs will only accept members that are registered on the FSPR. Amongst other things, this allows the DRSs to rely on checks completed by the Registrar that the provider meets the minimum requirements to provide financial services in New Zealand.
17. When determining who should be required to register on the FSPR, the following objectives should be taken into account:
 - a. promoting the purpose of the registration system (as outlined above)
 - b. not unnecessarily requiring entities to register on the FSPR i.e. where registration of an entity would not contribute materially to one of the purposes above
 - c. deterring registration by those that intend to misuse the FSPR.

Current situation: register if place of business in New Zealand

18. Anyone who is in the business of providing a financial service is required to be registered on the FSPR. Currently, the requirement applies to a person who is ordinarily resident in

New Zealand or has a place of business in New Zealand, regardless of where the financial services are provided to.

19. As noted previously,³ some offshore-controlled firms have sought to register on the FSPR in order to take advantage of New Zealand's reputation as a well-regulated jurisdiction. These firms are:
 - a. setting up superficial New Zealand operations in order to fall within the relatively wide scope of the registration requirements, and generally do not make financial services available to New Zealand-based customers
 - b. registering for financial services that are not subject to licensing requirements in New Zealand
 - c. then misrepresenting that they are licensed or actively regulated in New Zealand, in order to influence customers (particularly overseas-based customers) to use their services based on the belief that they are actively regulated in New Zealand.

The Bill: register if services provided to New Zealand persons

20. The Bill provides that the registration requirement applies to a person who is in the business of providing a financial service if their financial services are *provided to persons in New Zealand* regardless of where the financial service is provided from. The registration requirements also apply to a person required to be licensed or registered by another Act, for example, the Financial Markets Conduct Act 2013.
21. However, the registration requirements do not apply in any of the following circumstances:
 - a. merely because a person's financial services are accessible by persons in New Zealand
 - b. if a person has wholesale clients only and does not have a New Zealand place of business (as requiring registration would not facilitate access to dispute resolution if all New Zealand clients are wholesale)
 - c. if the services provided to persons in New Zealand are below a certain threshold to be prescribed in regulations.⁴
22. The Bill essentially changes the scope of registration from those that provide financial services *from* New Zealand to those that provide financial services *to* persons in New Zealand.
23. The following table sets out the implications of the changes:

³ See for example *Financial Service Providers (Registration and Dispute Resolution) Act 2008: Report on the operation of Part 2: Registration*, August 2015, pages 12-14.

⁴ See clause 64 of the Bill inserting new section 7A of the FSP Act.

Place of business	Customers	Currently can and required to register?	Can and required to register under Bill?
NZ place of business	Providing services to persons in New Zealand (retail or wholesale)	Yes	Yes (if above threshold)
	Providing services to offshore customers only	Yes	No
No NZ place of business	Providing services to New Zealand retail customers	No	Yes (if above threshold)
	Providing services to New Zealand wholesale customers only	No	No
	Providing services to offshore customers only	No	No

24. Providers with a place of business in New Zealand that provide financial services only to overseas persons will not be able to register.
25. The intention is that the need to have New Zealand clients would reduce the ease and net benefit of seeking registration for the purpose of misuse.
26. Offshore-based financial service providers that have New Zealand retail clients above a certain threshold will have to register even if they do not have a place of business in New Zealand. This means that some providers that are not currently required to register on the FSPR will be required to do so after the Bill passes.
 - a. A key rationale is that New Zealand retail customers of those entities would have access to free dispute resolution in New Zealand. New Zealand authorities would also have a fuller picture of those providing financial services to persons in New Zealand.
 - b. We acknowledge that New Zealand dispute resolution schemes may not in all cases be able to obtain redress for retail customers in relation to providers that do not have a place of business in New Zealand. However, on balance, we consider it important that New Zealand retail customers have access to New Zealand dispute resolution schemes when acquiring services from these providers.

The Regulations: not applying registration requirements in some cases

27. Regulations will prescribe a threshold level of financial services such that the registration requirements do not apply to persons that provide services below that threshold. Regulations can also exempt a class of persons from the application of the Act.
28. In the context of the misuse issues and the Bill's changes to the territorial application of the FSP Act, we are considering setting a threshold level and/or exempting certain classes of providers because:
 - a. in some cases, the level of financial services provided to New Zealanders may be so minimal that the costs of complying with the registration and dispute resolution membership requirements would be unreasonable in light of the benefits of compliance
 - b. a New Zealand customer may acquire services from an offshore provider in circumstances where it is unlikely that the customer would expect the provider to be subject to regulation in New Zealand or the jurisdiction of a New Zealand dispute resolution scheme

- c. a provider could seek to misuse the FSPR by for example, undertaking one or two sham transactions with New Zealanders in order to fall within the scope for registration. Prescribing a minimum level of transactions helps to reduce (but will not eliminate) the risk of such misuse.
29. Our proposals for the regulations have been developed based on the above reasons and the overall objectives in relation to determining who should be required to register as set out at paragraphs 16 and 17.

Proposals

30. We propose prescribing that the registration requirements would not apply in any of the circumstances in the following table.
31. Note that these exemptions only apply to financial services where a licence is not required to provide the service or registration is not otherwise required by another Act.⁵

Scenario to be exempt / below threshold for registration	Reasons and comments
<p>1. Services only to relatives and associates Provider only provides financial services to relatives, close business associates⁶ or associated persons⁷.</p>	<p>The benefit of access to dispute resolution is likely to be low if all New Zealand customers are relatives or associates of the provider.</p> <p>There is also a greater risk that the financial transactions are not genuine and are for the purposes of facilitating misuse of the register if all New Zealand clients are relatives or associates.</p>

⁵ For example, the proposed threshold and exemptions would not apply to providers licensed under the Financial Markets Conduct Act 2013 (FMC Act). The proposed threshold and exemptions would apply to for example, the services of keeping, investing, administering, managing money, securities or investment portfolios on behalf of other persons, and operating a money or value transfer service.

⁶ Based on the definitions in clauses 4 and 5 of schedule 1 of the FMC Act.

⁷ As defined in section 12 of the FMC Act.

Scenario to be exempt / below threshold for registration	Reasons and comments
<p>2. No promotion directed to persons in New Zealand Provider does not direct promotion of its services to persons in New Zealand (e.g. website accessible by anyone worldwide. No advertising directed to persons in New Zealand).</p> <p>Directing promotions to persons in New Zealand would include placing advertisements where persons in New Zealand specifically are likely to see the advertisement, or sending advertisements to persons who the provider knows or ought to know are in New Zealand.</p> <p>Directing promotions to persons in New Zealand would not include advertising to persons that have opted-in to receiving the advertising, and they opted-in either at their own initiative or in response to advertising that was not directed at New Zealand persons (e.g. website operator sends bulk email to existing customer base, which may include customers in New Zealand who started using that operator’s services at the customer’s own initiative).</p>	<p>It is unlikely that the customer would expect the provider to be subject to regulation in New Zealand or be within the jurisdiction of a New Zealand dispute resolution scheme.</p> <p>In many cases, the level of financial service provided in New Zealand is also likely to be so low that the costs of compliance may be unreasonable in light of the benefits.</p> <p>However, there may be some grey areas where it is difficult to identify whether advertising has been directed at a person in New Zealand. We welcome feedback on how to define a threshold or exemption clearly in order to minimise such grey areas.</p> <p>The provision in the Bill stating that registration “does not apply merely because A’s financial services are accessible by persons in New Zealand” likely already excludes many providers in this category. Following feedback, we will analyse how the Bill interacts with any proposed regulations.</p> <p>The proposal is that a provider would not need to register even if they had a large New Zealand customer base as long as they did not direct promotion of their services to persons in New Zealand. We would welcome feedback on this aspect of the proposal.</p>
<p>3. Services obtained whilst overseas Overseas provider only provides services:</p> <ol style="list-style-type: none"> a. obtained by the person in New Zealand (“New Zealand client”) while they were overseas (e.g. A person obtains a revolving loan while in Australia and subsequently moves to New Zealand. The person continues drawing down on the revolving loan while living in New Zealand); or b. related to the services obtained overseas (e.g. A wealthy wholesale client engages an Australian provider to manage their investment portfolio while in Australia and subsequently moves to New Zealand. As part of managing the investment portfolio, the Australian provider trades foreign exchange on behalf of the customer while the customer is in New Zealand). <p><u>and</u> the provider does not otherwise induce persons in New Zealand to use their service.</p>	<p>It is unlikely that the customer would expect the provider to be subject to regulation in New Zealand or be within the jurisdiction of a New Zealand dispute resolution scheme.</p>

Scenario to be exempt / below threshold for registration	Reasons and comments
<p>4. De minimis level of services Provider, in the <u>six months after registration</u> (or in the six months after commencing business, if provider is not registered):</p> <ul style="list-style-type: none"> • provides financial services to less than five persons in New Zealand; and • the total value of the financial services transactions with persons in New Zealand are less than \$5,000; and • the financial services transactions with persons in New Zealand make up less than 50% of the provider's business by value. <p>Thereafter, provider <u>in any full year ending on the date of its annual confirmation</u>:</p> <ul style="list-style-type: none"> • provides financial services to less than ten persons in New Zealand; and • the total value of the financial services transactions with persons in New Zealand are less than \$10,000; and • the financial services transactions with persons in New Zealand make up less than 50% of the provider's business by value. <p>Services to relatives and associates in New Zealand are excluded for the purposes of determining whether the above volumes are met. Services to New Zealand wholesale clients also excluded for those without a place of business in New Zealand.</p> <p>Example 1: An offshore-controlled foreign exchange provider expects to have only two New Zealand customers with transactions totalling \$2,000 in the six months after commencing business in New Zealand, but expects to have \$1,000,000 in transactions with clients in the rest of the world during that time. Provider would not be required to register.</p> <p>Example 2: A New Zealand mobile truck shop has eight New Zealand customers with loans totalling \$3,000, but has no customers elsewhere in the world. Provider would be required to register.</p> <p>At the point of applying for registration, the proposed thresholds are forward-looking. Applicants would need to be able to satisfy the Registrar that they expect to be providing financial services above the prescribed</p>	<p>If a provider's services are below the proposed threshold, there is a risk of misuse e.g. providers could sign up one or two customers and advertise through obscure channels or advertise a poor service in order to otherwise fall within the scope of registration. Requiring a minimum level of services to persons in New Zealand provides greater comfort that a provider will likely be carrying out genuine financial services transactions with persons in New Zealand.</p> <p>The threshold levels have been tentatively selected with a view to making the threshold difficult to meet for those seeking to misuse, but minimising the extent to which New Zealand retail customers would miss out on access to dispute resolution. We welcome feedback on the extent to which the proposed threshold levels achieve these goals.</p> <p>The last element of the threshold relates to the percentage of the provider's business that is provided to persons in New Zealand. That element is included so that substantive New Zealand businesses are not able to avoid registration requirements by virtue of having a small number of customers.</p> <p>Prescribing a threshold would add complexity to the Registrar's role and to any enforcement action (e.g. taking enforcement action against providers that are unregistered when they should be). However, we consider it necessary to prescribe a threshold to help address the misuse problem.</p>

Scenario to be exempt / below threshold for registration	Reasons and comments
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threshold in the six months following registration i.e. that they expect to have more than five customers with more than \$5,000 in transactions in the six months following registration (excluding any relatives and associates). The Registrar may then conduct checks six months after registration and initiate deregistration for any provider that has not met the threshold in the first six months. (Refer paragraph 60 of this paper)

Thereafter, we propose that if a registered provider has not met the annual threshold in any full year ending on the date of the provider’s annual confirmation, the Registrar can initiate deregistration.

In each case, the provider can object to the proposed deregistration on the grounds that due to exceptional circumstances it was unable to meet the threshold (e.g. unexpected exceptional changes to market conditions, the provider expects to meet the thresholds going forward).

Example 3: On its annual confirmation date in 2019, a registered provider confirms that it did not meet the threshold for the past year. It had only two New Zealand customers with transactions totalling \$7,500, but had \$1,000,000 in transactions with clients in the rest of the world. The Registrar may initiate the deregistration process (during which the provider can raise objections).

32. There will need to be clear communications for consumers about when providers are required to be registered and to be members of a dispute resolution scheme, and about the benefits of using a provider that is registered and a member of a dispute resolution scheme.
33. If a previously registered provider has been deregistered but is continuing to provide services to a small number of New Zealand persons under the threshold in scenario 4 (De minimis level of service), we propose that providers be required to inform any remaining New Zealand clients that they are no longer a member of a dispute resolution scheme, so that those clients are aware that they no longer have access to dispute resolution.

1	Do you agree that the above scenarios should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?
2	In the context of the misuse issues and the changes to the territorial scope of registration

	requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?
3	Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting of any regulations.) Do you have any suggestions as to how this could be made clear?
4	Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?
5	In relation to scenario 4 (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.
6	In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.
7	In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?
8	In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

3 Limiting promotion of registered status

Background

Some providers have used their registered status to create a misleading impression

34. Two key factors have allowed for misuse of the FSPR:
 - a. the relative ease of becoming registered
 - b. the misunderstanding by some consumers that being registered means that the provider has satisfied a government authority that it is capable of effectively providing the financial service in New Zealand or that the provider is subject to active regulation in New Zealand. Once registered, some providers have taken advantage of this misunderstanding by promoting their registered status to give the impression of credibility.

The Bill: providing for limitations around advertising of registered status

35. The changes in the Bill discussed in section 2 of this document are intended to address the first factor above – the relative ease of becoming registered. Those not providing financial services to persons in New Zealand would not be able to register.
36. However, those changes do not guarantee that providers seeking to misuse the register would not be able to become registered. For example, a provider could purchase ownership in existing registered FSPs in order to avoid the checks that would have been conducted at the application stage. A provider could also undertake sham transactions with persons in New Zealand in order to meet the new registration requirements.
37. If those instances arise, regulating the way that providers can advertise their registered status is a key way of addressing the remaining risk of misuse.
38. Changes to section 44(1) of the FSP Act provide for regulations to prescribe:
 - a. warnings or information in relation to the provider's registration that must be included
 - b. the circumstances in which the warnings or information must be given
 - c. the manner in which the duty to provide a warning or information must be carried out.
39. Under changes to section 18, failure to comply with those advertising requirements is a ground for deregistration. A person who in the past year has been deregistered (or been a director or senior manager of a provider that has been deregistered) for failure to comply with the advertising requirements is disqualified from registering as an FSP, or being a director, senior manager or controlling owner of an FSP (see changes to section 14).

The regulations: detail of advertising limitations

- 40. Regulations are required to set out the details of the advertising limitations as referred to at paragraph 38 above.
- 41. In assessing options for proposed regulations, the following factors should be taken into account:
 - a. The regulations should only apply in circumstances when:
 - i. a misleading impression may be given about what it means for a provider to be registered and/or be a member of a dispute resolution scheme, e.g. if a potential client might perceive a reference to the provider being registered as meaning that it is licensed or has otherwise been assessed as capable of effectively providing financial services; and
 - ii. that misleading impression could be misused by the provider.
 - b. The information required by the regulations should limit the potential for misuse by clarifying any potential misunderstanding about what it means to be registered and/or be a member of a dispute resolution scheme.
 - c. The information required by the regulations should not unjustifiably deter consumers and others from dealing with legitimate providers.
 - d. Providers should be able to comply with the regulations without excessive cost.
- 42. In balancing 41.b and 41.c above, it would be helpful for us to understand the circumstances in which legitimate providers may refer to their registration.

Proposals

Circumstances in which the warnings or information must be given

- 43. Under the Bill, regulations can prescribe warnings or other information that must be included in “advertising for the service or in information or documents provided” to clients or potential clients.
- 44. The regulations do not have to apply to all advertising, information and documents given. The regulations can prescribe the circumstances in which the duty applies.
- 45. As noted above, the intent is that the regulations should only apply in circumstances when a misleading impression may be created which could be misused by the provider. A warning or information is unlikely to be required in the circumstances set out in the following table.

Circumstance where regulations should <u>not</u> apply	Reasons and comments
If provider is licensed in New Zealand in respect of any of its financial services (even if it is not the particular service that the provider is advertising).	If a provider has been subject to pre-vetting by the FMA or the Reserve Bank, they will have been assessed as capable of effectively providing some financial services in New Zealand and are unlikely to be seeking to misuse their financial service provider registration.

If the provider does not refer to its financial service provider registration or dispute resolution membership at all.	If the provider does not refer to its registration or dispute resolution membership, a person is unlikely to take a misleading impression about the provider’s credibility in connection with its registration or dispute resolution membership.
Or if the reference to financial service provider registration or dispute resolution membership is otherwise required by New Zealand law or the rules of the relevant dispute resolution membership scheme.	<p>A person could still find the provider in the FSPR itself, however, the FSPR would contain clear messaging that registration does not constitute official government approval of a provider.</p> <p>Similarly, if a reference to the registration or dispute resolution membership is limited to what is required by New Zealand law or scheme rules, e.g. in disclosure documents under the Credit Contracts and Consumer Finance Act 2003, the circumstances of disclosure are unlikely to give rise to a misleading impression.</p>

46. In other words, we propose that the regulations **only apply** in the following circumstances:

Circumstance where regulations should apply

- If provider is registered but not licensed in New Zealand; and
- The provider refers to its financial service provider registration or dispute resolution membership; and
- The reference to financial service provider registration or dispute resolution membership is not otherwise required by another New Zealand law or dispute resolution scheme rules.

47. The regulations could prescribe different warnings or information to be included in different circumstances. Within the circumstances described in paragraph 46, there are subsets of circumstances which could give rise to other particular risks, discussed under paragraph 50 below.

The warnings or information to be given

General circumstances

48. Having regard to the factors set out at paragraph 41, the following table sets out the warnings or information that we propose the regulations require providers to include in advertising in the circumstances referred to at paragraph 46.

Proposed warnings or information to be given	Reasons or comments
<p>A provider must explain that:</p> <p>We are [registered as a financial service provider in New Zealand/a member of a New Zealand dispute resolution scheme]. However, we have not been licensed by a New Zealand regulator and we are not actively regulated in New Zealand.</p>	<p>This is intended to make clear to potential customers that registration or dispute resolution membership does not mean that the provider has been licensed or is actively regulated in New Zealand.</p>

49. We also welcome feedback on whether providers should also be permitted to refer to their FSP registration number only with a hyperlink to its FSPR registration page (without including the above warning statement). Reference to the FSP registration number alone may not mislead potential customers as to the provider’s status and credibility. Should customers decide to investigate further, the link to the provider’s registration and information available on the FSPR would likely clear up any misunderstanding.

Additional specific circumstances

50. As well as the information under paragraph 48, we propose providers also include in advertising to clients or potential clients the following further information in the following circumstances, because they give rise to specific additional risks.

Proposed warnings or information to be given in additional specific circumstances	Reasons or comments
<p>If an overseas provider with no place of business in New Zealand – advertising to New Zealand persons – refers to its registration or New Zealand dispute resolution membership, it must also explain:</p>	<p>A consumer may perceive the providers’ registration and/or dispute resolution membership as meaning they have greater protections against misconduct by the provider than is actually the case. They may think that New Zealand authorities or dispute resolution schemes can obtain redress for them if something goes wrong. As noted at paragraph 26 above, this may not be the case where the provider does not have a place of business in New Zealand.</p> <p>The proposed information is intended to clear up potential misunderstanding in that respect.</p>
<p>If an overseas provider with no place of business in New Zealand – advertising to overseas persons – refers to its registration or New Zealand dispute resolution membership, it must also explain:</p>	<p>An overseas consumer may perceive the providers’ registration and/or dispute resolution membership as meaning they will have access to New Zealand dispute resolution in respect of any disputes. This will not be the case given the lack of connection to New Zealand.⁸ The proposed information is intended to make that clear.</p>

51. We welcome feedback on whether information requirements along the lines proposed strikes the right balance taking into account the factors referred to at paragraph 41 above e.g. whether the proposed information would unjustifiably interfere with legitimate providers who may have business reasons to refer to their registration.

⁸ We will work with dispute resolution schemes to consider whether their rules should be clarified to explicitly exclude disputes between overseas customers and providers that do not have a place of business in New Zealand.

The manner in which the warning or information is to be given

- 52. We welcome feedback on whether the warnings or information to be prescribed in regulations should be in the form of:
 - a. prescribed wording that providers must use; or
 - b. information that providers must convey using their own choice of words; or
 - c. information that providers must convey using their own choice of words, with “safe harbour” wording provided so that the duty to include information is deemed satisfied if the safe harbour wording is used.
- 53. Prescribed wording would be the most clear-cut from an enforcement perspective (though there would still be issues translating from languages other than English). However, providers may need to adapt wording to the circumstances of the advertisement or document.
- 54. To ensure that the warning or information is prominent, we propose that the prescribed warning or information must be provided in a manner that is at least as prominent (in terms of font size and placement) as any references to the provider’s registered status or dispute resolution membership.

9	What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)
10	Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraph 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?
11	Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.
12	Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?
13	Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.
14	How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

4 Information to be supplied by applicants and providers

Background

Information from applicants and providers

55. As discussed in section 2, the Bill provides that the registration requirements apply to those in the business of providing financial services to persons in New Zealand. The purpose of requiring New Zealand clients is to reduce the ease and net benefit of seeking registration in New Zealand for misuse purposes. This change means that the Registrar may require different types of information to help assess whether the registration requirements are and continue to be met.
56. Regulations currently prescribe the information that applicants are required to provide at the time of application and that registered providers are required to provide annually through its annual confirmation.⁹ We are considering changes to these regulations to assist the Registrar with determining whether the registration requirements are and continue to be met. We note though that apart from what is prescribed in the regulations, in practice, the Registrar's office may also request further information from the applicant to assess whether the registration requirements are met.

New section 16(1A) mechanism

57. As one way to help check that a person is in fact in the business of providing a financial service to persons in New Zealand, new section 16(1A) of the Bill provides that the Registrar may require a provider to provide certain information (to be prescribed in regulations).¹⁰
58. If a provider fails to provide the prescribed information as required, the Registrar may treat the grounds for deregistration as being met. The Registrar must still give notice of its intention to deregister under section 19 and the provider may object to the proposed deregistration, but only on the grounds that the provider did comply with the requirement to provide prescribed information.¹¹
59. This is intended to be a more streamlined deregistration mechanism, as the Registrar would only need to be satisfied that the required information was not provided. The Registrar would not need to establish that the provider was in fact not providing financial services to persons in New Zealand above the prescribed threshold.

⁹ See Schedules 1 and 3 of the Financial Service Providers (Registration) Regulations 2010.

¹⁰ New section 16(1A) provides that "The Registrar may require a person to provide prescribed information in the prescribed manner for the purpose of ascertaining whether the person is in the business of providing a financial service to persons in New Zealand."

¹¹ See new section 16(1B) and new section 20(3).

Regulations under section 16(1A)

60. Regulations will prescribe information that the Registrar *may* at its discretion require from providers and the manner in which that information will be provided. The section 16(1A) mechanism could potentially be used in different ways:
- a. **As an additional check:** The nature of the FSP registration scheme is that it provides for registration to occur before a provider commences providing services. It may sometimes be difficult for the Registrar to detect at the point of registration whether a provider *will be* providing financial services to persons in New Zealand above the prescribed threshold or not. Therefore there remains a risk that a person may register as an FSP without any intention of genuinely providing services to New Zealanders, then go on to misuse that registration.

The section 16(1A) mechanism mitigates that risk by allowing the Registrar to require information after registration showing the provider has commenced providing financial services to persons in New Zealand above the threshold.

For example, if the Registrar is uncertain as to whether a new registered provider is genuinely intending to provide financial services to persons in New Zealand, the Registrar could use the mechanism after six months after registration to check whether the provider has met the prescribed threshold referred to on page 13.
 - b. **During the transitional stage to ascertain which existing registered providers meet new requirements:** There will be a number of registered financial service providers currently required to register, but not required (or able) to do so once the Bill comes into force. The section 16(1A) mechanism could also be used to allow the Registrar to require information from some of the existing registered providers to ascertain whether those providers meet the new requirements for registration.
 - c. **At any other time:** The mechanism could also be used to allow the Registrar to investigate particular providers to ascertain whether they have been or are continuing to provide financial services to persons in New Zealand (e.g. in the course of investigating a complaint).
61. In assessing the information and manner that should be prescribed in regulations, the following factors should be taken into account:
- a. The information required should give some reassurance that the provider is genuinely providing financial services in New Zealand above the prescribed threshold, taking into account the ability of the Registrar to verify the information provided may sometimes be limited.
 - b. The level of information required should be clear and certain: In relation to the section 16(1A) mechanism, in order to facilitate the more streamlined deregistration process, it should as much as possible be a clear question of fact whether the information provided has met the requirements in regulations.
 - c. It should be feasible for the provider to obtain the information required, and to do so without incurring excessive cost, and without intruding into the privacy of the provider's customers.
 - d. There should be a strong deterrent against any misleading statements in the information to be provided.

Proposals

Regulations under section 16(1A)

62. Taking the above factors into account, we propose that the regulations prescribe something along the lines of the following information and manner of providing information (if required by the Registrar).

Requirement	Reasons and comments
<p>If the Registrar chooses to use the mechanism, providers should be given a reasonable notice period prior to being required to provide the relevant information e.g. at least 20 working days. The Registrar could also, prior to finalising registration, notify the provider that it is required to provide the prescribed information around seven months following registration.</p>	<p>This information is likely to provide some reassurance that the provider is genuinely providing financial services in New Zealand. Given that providing false or misleading information is a ground for deregistration as well as an offence under the FSP Act, providers are likely to be incentivised to ensure the information provided is not false or misleading.</p>
<p>The information should contain:</p> <ul style="list-style-type: none"> • Confirmation that the provider is providing financial services to persons in New Zealand. • The number of New Zealand customers, total value of transactions, and percentage of transactions in New Zealand. 	<p>In some cases, the Registrar could request that the information be confirmed by directors of particular providers e.g. if there are doubts about the information provided by the company. Personal liability for the director would act as a greater incentive to ensure that the information provided is not false or misleading.</p>
<p>The information must be provided:</p> <ul style="list-style-type: none"> • by the provider itself; or • at the Registrar’s request, by a director of the provider. 	<p>We acknowledge that (other than deregistration) there may be limits as to the extent action can be taken against wholly overseas providers or overseas-based directors for false and misleading information. Therefore, there remains a greater risk that information provided by such providers under these regulations could be false or misleading.</p>

Changes to information required at the application stage and annual confirmation

63. We also propose that the regulations prescribe that registered providers must provide the following information in their annual confirmation.

Information required in annual confirmation	Reasons and comments
<p>Confirm that the provider either:</p> <ul style="list-style-type: none"> continues to meet the registration requirements in new section 7A, including that any prescribed thresholds have been met and are expected to be met for the upcoming year; or is licensed or required to be registered under another Act. 	<p>This information is likely to provide some assurance that the provider continues to meet the requirements to be registered.</p> <p>Given that providing false or misleading information in an annual confirmation is a ground for deregistration as well as an offence under the FSP Act, providers are likely to be incentivised to ensure the information provided is not false or misleading.</p> <p>Although as noted above, we acknowledge this incentive is more limited in relation to wholly overseas providers.</p>
<p>Advise of any changes to directors or controlling owners, or confirm that there have been no such changes.</p>	<p>Entities have previously sought to purchase ownership in existing registered providers in order to avoid the checks that would have been conducted at the application stage. Requiring information about any changes to directors or controlling owners will help to identify whether a registered provider may have been passed into the hands of potentially unscrupulous owners.</p> <p>Where there have been changes to directors or controlling owners, the Registrar may wish to conduct additional checks in relation to whether the provider is still required to be registered, including that it is continuing to provide services in New Zealand above the prescribed threshold.</p>

15	Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 above? If not, why not?
16	Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 above? If not, why not?
17	Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?

Annex 1: Summary of changes and proposals – registration of financial service providers

Part 2 of the Financial Services Legislation Amendment Bill amends the regime for registration of financial service providers. In particular, it:

- amends the territorial application of the registration requirements and includes other measures aimed at addressing misuse of the Financial Service Providers Register (**FSPR**)
- provides for changes to the categories of financial services used on the FSPR, for the purpose of minimising uncertainty and overlap between certain categories.

WHO CAN AND WILL BE REQUIRED TO REGISTER ON THE FSPR?

Anyone in the business of providing financial services will be required to register on the FSPR if their **financial services are provided to persons in New Zealand**:

- The requirement to register applies **regardless of whether the provider has a place of business in New Zealand**.
- But the registration requirements do not apply if the **services provided in New Zealand are below a threshold** to be prescribed in regulations or if a person has **wholesale clients only and does not have a New Zealand place of business**.

Financial service providers with a place of business in New Zealand that provide financial services only to overseas persons will not be able to register. Offshore financial service providers with retail clients in New Zealand above a threshold will be required to register under the Bill.

Place of business	Customers	Currently can and required to register?	Can and required to register under Bill?
NZ place of business	Providing services to persons in New Zealand (retail or wholesale)	Yes	Yes (if above threshold)
	Providing services to offshore customers only	Yes	No
No NZ place of business	Providing services to New Zealand retail customers	No	Yes (if above threshold)
	Providing service to New Zealand wholesale customers only	No	No
	Providing services to offshore customers only	No	No

There will also be restrictions around providers promoting their registered status, the details of which will be set out in regulations.

SUMMARY OF PROPOSALS

Note these proposals are not intended to affect providers that are required to obtain a licence in order to provide financial services or where registration on the FSPR is required by another Act.

Threshold for registration & exemptions

We propose that regulations prescribe a threshold below which providers are not required or able to register on the FSPR. In particular, this recognises that a provider could otherwise misuse the FSPR by undertaking a small number of sham transactions with New Zealanders in order to register. We propose that:

- Registration not be required or allowed where the provider, in the six months after registration (or in the six months after commencing business, if provider is not registered):
 - provides financial services to less than five persons in New Zealand; and
 - the total value of those services to persons in New Zealand are less than \$5,000; and
 - those services to persons in New Zealand make up less than 50% of the provider's business.At the point of applying for registration, the proposed thresholds are forward-looking. Applicants will need to satisfy the Registrar that they expect to be providing financial services above the prescribed threshold in the six months following registration.
- Thereafter, registration not be required or allowed where the provider in any full year ending on the date of its annual confirmation:
 - provides financial services to less than ten persons in New Zealand; and
 - the total value of those services to persons in New Zealand are less than \$10,000; and
 - those services to persons in New Zealand make up less than 50% of the provider's business.

Further details and other circumstances proposed to be exempt from registration requirements are set out at pages 11-14 of the discussion paper.

Limits on promotion of registered status

We also propose that regulations prescribe information to be given in certain circumstances, in order to limit the potential for misunderstanding about what it means for a provider to be registered and/or be a member of a dispute resolution scheme. We propose the regulations apply in the following circumstances:

- If the provider is registered but not licensed in New Zealand; and
- The provider refers to its FSPR registration or dispute resolution membership; and
- The reference to financial service provider registration or dispute resolution membership is not otherwise required by another New Zealand law or dispute resolution scheme rules.

In those circumstances, we propose that providers be required to explain that:

We are [registered as a financial service provider in New Zealand/a member of a New Zealand dispute resolution scheme]. However, we have not been licensed by a New Zealand regulator and we are not actively regulated in New Zealand.

We propose that overseas providers without a place of business in New Zealand also be required to explain to (potential) clients that if something goes wrong, it will be more challenging for New Zealand regulators and/or dispute resolution schemes to help.

Information requirements

We also propose changes to the information that the Registrar can and will require from providers in order to help assess whether registration requirements are and continue to be met.

NEXT STEPS

The below dates are indicative only. Further information will be provided as regulations are developed and further work is completed in relation to implementing the changes.

Policy for Regulations finalised (Q3 2018)

Decisions in relation to prescribed threshold for registration, advertising limitations and sub-categories of registration to be finalised and announced.

After Bill passed, and Regulations are made and come into force (TBC, late 2018)

Anyone that does not provide financial services to persons in New Zealand (above the prescribed threshold) will no longer be able to register.

Existing registered providers may be asked to advise whether they are providing financial services to persons in New Zealand (including through their annual confirmation).

Applications for registration open for those that are newly subject to the registration requirements (e.g. persons that do not have a place of business in New Zealand but that provide financial services to persons in New Zealand above the prescribed threshold).

6 months after Bill passes into law¹²

Deadline to become registered and be member of approved dispute resolution scheme for those that are newly subject to the registration requirements.

Late 2019 (TBC)

FSPR to use new categories of financial services (to be set out in regulations). Providers will be given a period to select which new category is applicable to them.

¹² Schedule 3 of the Bill provides for the 6 month period.