

**Response to the Ministry of
Business, Innovation and
Employment**

on the

**Misuse of the Financial Service
Providers Register**

29 January 2016



1.0 INTRODUCTION

- 1.1 This submission has been prepared by Bank of New Zealand ('BNZ') in response to the Ministry of Business, Innovation and Employment (MBIE)'s consultation document, Options paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPRDRA) released on or about 24 November 2015
- 1.2 BNZ welcomes this opportunity to provide a response to the MBIE consultation document and acknowledges the industry consultation undertaken on this matter. This submission covers only the misuse of the Financial Service Providers Register (FSPR).

2.0 EXECUTIVE SUMMARY

- 2.1 BNZ supports changes designed to protect the reputation of New Zealand as a soundly regulated jurisdiction and the reputation of legitimate New Zealand financial service providers.
- 2.2 Given the potential benefits that might accrue from improved awareness and knowledge about the register, BNZ submits there would be advantages in increasing the education of the public about the FSPR, including that it is not a licensing or regulatory prudential oversight regime.
- 2.3 BNZ supports a combination of Options 1, 2 (in part), 3 and 4. Offshore financial service providers should be required to provide evidence that they are licensed or supervised in their home jurisdiction in respect of the services they are proposing to provide. However, it is noted that not all home jurisdictions require licensing or supervision – this information should also be provided if it is applicable and a warning provided on the FSPR that the provider is not regulated. Not providing a substantive amount of financial service from a place of business in New Zealand should be grounds for declining registration or deregistration. BNZ agrees that requiring a provider to provide services to clients in New Zealand or to entities carrying on business of providing financial services in New Zealand would be a positive move. BNZ also supports requiring trust and company service providers who are subject to Anti-money laundering legislation to be registered on the FSPR.
- 2.4 BNZ submits that it should be a requirement for a registered financial service provider to state on its website, in an appropriate location such as an "About Us" page, that it is registered on the FSPR and provide a link to the FSPR so that it is easy for members of the public to check out the registered details of the provider.
- 2.5 BNZ does not support restricting access to the FSPR as proposed by Options 5 and 6. The ability of the public to search the FSPR is an important feature, which should be enhanced rather than restricted.

3.0 RESPONSES TO QUESTIONS

3.1

Question	
Q 36	<i>Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?</i>
	<p>BNZ agrees that the reputation of New Zealand as a well registered jurisdiction should be protected in order to preserve the reputation of legitimate New Zealand based financial service providers.</p> <p>BNZ agrees that the status of the FSPR may be often misunderstood. Registration on it is merely an administrative registration. Registration does not offer licensing or confer regulatory approval, but there is a risk that this can be implied. It is understood that some people or entities that are undertaking inappropriate or even fraudulent commercial activities, may be taking advantage of this ambiguity or lack of public awareness. Therefore, there is a case for greater education of the public</p>

	about the FSPR and the information that the FSPR can provide, including that it is not a licensing or regulatory prudential oversight regime.
Q37	<i>What option or combination of options do you prefer and why? What are the costs and benefits?</i>
	<p>BNZ considers that it is better to make it more difficult for unsuitable advisers to register on the FSPR in the first place. Requiring overseas providers to confirm and provide evidence that they are licensed and/or supervised in their home jurisdiction, and in any jurisdiction that they are proposing to provide services to, would be helpful. Requiring an indemnity or bond would impose a disincentive for fraudulent providers but would also add a cost for legitimate providers. Therefore, BNZ supports Option 1.</p> <p>BNZ also supports Option 2 to the extent that it proposes an amendment to the FSPRDRA that would give the FMA greater powers to recommend deregistration of a provider on grounds that the provider does not provide a substantive amount of services from a place of business in New Zealand. BNZ does not support the adoption of standard wording for describing registration but would support a requirement that a provider not be misleading or deceptive in the manner in which it describes its registration. For example on its website or in other material it should not state or infer that registration on the FSPR confers a licence or other form of regulatory approval or supervision. BNZ notes that it is already an offence under section 41 (1) of the FSPRDRA for a provider to falsely or misleadingly represent that it is registered when it is not.</p> <p>It is also submitted that it should be a requirement for a registered financial service provider to state on its website that it is registered on the FSPR and provide a link to the FSPR so that it is easy for members of the public to check out the registered details of the provider.</p> <p>BNZ would also support Option 3 – requiring providers to provide services to clients within New Zealand, or entities providing a financial service in New Zealand, and not just have a place of business here.</p> <p>BNZ therefore favours Option 1 in conjunction with Options 2 and 3. BNZ does not favour limiting public access to the FSPR as proposed in Options 5 and 6 because it would reduce the utility of the FSPR for consumers.</p> <p>BNZ supports Option 4 – requiring trust and company service providers who are subject to Anti-money laundering legislation to register as financial service providers. This obligation would be consistent with the purpose of the FSPRDRA as set out in section 9(c) of the Act – in meeting New Zealand’s obligations under FATF Recommendations.</p>
Q38	<i>What are the potential risks and unintended consequences of the options above? How could these be mitigated?</i>
	BNZ does not favour Options 5 and 6 because they would limit the ability of the public to obtain information about the financial service provider, including its business address, applicable disputes resolution scheme and the type(s) of financial service for which the financial service provider is registered. BNZ does not consider that the proposed law changes in Options 1, 2, 3 and 4 would give rise to increased compliance costs that would be sufficient to deter legitimate financial service providers from establishing places of business in New Zealand.
Q 39	<i>Would limiting public access to parts of the FSPR help reduce misuse?</i>

<p>BNZ is not convinced that limiting public access to the FSPR would reduce misuse. In particular, an off-shore controlled firm could still claim that it was a New Zealand registered financial service provider. BNZ favours the maintaining a transparent register that can be searched by members of the public.</p> <p>Consideration should be given as to whether there are other types of information (in addition to those set out in section 27(1)) that it might be useful to keep on the register – for example, details of any successful complaints (taken from the records of the relevant disputes resolution scheme or disciplinary committee), details of qualifications of directors and senior employees, a link to the information maintained by the Companies office and more detailed information on the financial services provided.</p>
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4.0 CONCLUSION

4.1 BNZ is pleased to provide this submission and the information it contains. BNZ is available to discuss any issues raised.

4.2 Should MBIE have any questions in relation to this submission, please contact:

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