

Financial Services News Alert

23 June 2010

Financial Service Providers (Pre-Implementation Adjustments) Bill passed

The Financial Service Providers (Pre-Implementation Adjustments) Bill (**Bill**) has been split in two and passed by Parliament today, with last minute changes inserted by way of supplementary order paper (**SOP**). A copy of the SOPs splitting the Bill to amend each of the Financial Advisers Act 2008 (**FA Act**) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) and making the further changes are available [here](#) and [here](#).

What are the final changes?

The commentary to the amending SOP describes the final changes as needed to ensure that the Bill was legally effective, consistent, and works appropriately and to correct minor drafting errors. The changes include:

- Allowing clients to revoke their self-certification that they are eligible investors who can be treated as wholesale clients under FA Act or FSP Act in respect of advice given after the revocation.
- Clarification that there can be class investment planning services.
- Clarification that providing credit under a credit contract is not within the scope of the FA Act if both the advice service and the credit service are provided incidentally to another business that is not otherwise a financial service.
- Removal of the obligation for an authorised financial adviser to report a material breach of the FA Act or code to the Securities Commission is removed, although a report of this kind is still permitted and protected by the FA Act.
- Changes to ensure that a financial adviser service is a personalised service if the financial adviser has in fact taken into account the client's particular financial situation or goals, even if a reasonable client would not have expected the financial adviser to have done so in all the circumstances.
- Removing the offence where a QFE adviser continues to provide financial adviser services if the employer or principal is no longer qualified to do so (as that offence is redundant because the QFE adviser's own entitlement to provide financial adviser services will cease in this case).

- Enabling the Commission, subject to regulations, to authorise individuals to provide financial adviser services or discretionary investment management services in relation to category 2 products.
- Removing the power of the Commission to ban registered financial advisers (although the High Court keeps power to ban all types of financial advisers).
- Exempting authorised futures dealers from the need to be brokers under the FA Act.
- Providing that a determination of which type of financial service a person comes within under the FSP Act will now be made in the application for registration by, and subsequent registration of, the financial service provider (rather than through regulations defining the classes of financial service).
- Removing the specific power for an unincorporated body to apply for registration under the FSP Act.
- Enabling regulations to be made to deal with any transitional issues with the implementation of the FA Act and FSP Act, including not applying particular provisions of either Act in that period, or applying them with modifications (but only until the close of 30 June 2013, at which time both the regulation empowering provisions, and any regulations made under them, expire).

How can we help you?

We have been busy advising clients in New Zealand, and offshore, on the implications of the FSP Act and the FA Act. We can talk to you about how the Acts may affect your business, assist in dealing with the Securities Commission in respect of approval as a QFE or as an AFA, or discuss the likely impact of the “wholesale” treatment or the exempt provider provisions on your business.

Further information



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