

**Reprint
as at 1 April 2011**



**Financial Service Providers
(Registration and Dispute
Resolution) Act 2008**

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Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Economic Development.

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1 Title

This Act is the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

2 Commencement

- (1) Part 2 and section 48 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more orders may be made that do either or both of the following:
 - (a) bring different provisions into force on different dates:
 - (b) bring provisions into force on different dates in respect of different types of financial service or financial service provider.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Section 2(1)(a): Part 2 (except subpart 1) and section 48 brought into force, on 16 August 2010, by clause 2 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1)(b): subpart 1 of Part 2 brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1)(b): subpart 1 of Part 2 brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 2(1): substituted, on 1 July 2010, by section 5 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Part 1

Preliminary provisions

3 Overview

- (1) This Act requires financial service providers to be registered.
- (2) In order to be registered, financial service providers are generally required to be members of a dispute resolution scheme if they provide financial services to retail clients.
- (3) The Act sets out how a dispute resolution scheme may be approved by the Minister, why the approval might be withdrawn, and how a dispute resolution scheme may be appointed as the reserve scheme.

- (4) The Act provides that the reserve scheme is to act as the default dispute resolution scheme and is to be capable of resolving disputes relating to all types of financial service providers.
- (5) This section is intended as a guide only.

Section 3(2): substituted, on 1 July 2010, by section 6 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

4 Interpretation

In this Act, unless the context otherwise requires,—

affiliated entity means an affiliated entity that has been identified in an Order in Council in accordance with section 23(3)

annual confirmation means the annual confirmation relating to a registered provider supplied to the Registrar under section 28

annual report means the annual report relating to an approved dispute resolution scheme supplied to the Minister under section 68

approved dispute resolution scheme has the meaning given by section 50

broker has the meaning given by section 77A of the Financial Advisers Act 2008

broking service has the meaning given by section 77B of the Financial Advisers Act 2008

business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

chartered accountant has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996

chief executive means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

company means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

contract of insurance—

- (a) means every contract of insurance including a contract of life insurance (including endowment and annuity contracts) and reinsurance; but
- (b) does not include a class of contract declared not to be a contract of insurance by regulations

controlling owner means, in relation to a financial service provider that is not an individual, any person who beneficially owns 50% or more of that provider

conveyancing practitioner has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

credit contract—

- (a) has the meaning given by section 7 of the Credit Contracts and Consumer Finance Act 2003; but
- (b) does not include—
 - (i) contracts specified in section 15(1)(a) or (b) of that Act;
 - (ii) contracts to be treated as credit sales and consumer credit contracts under section 16 of that Act;
 - (iii) contracts under which no interest charges as defined in section 5 of that Act are payable

director has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a company, a person who occupies a position comparable to that of a director (such as a trustee or a partner)

document means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms a part, or to which it is attached;
 - (ii) a book, map, plan, graph, or drawing;
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information

due date, in relation to an annual confirmation, means the date allocated to a registered financial service provider by the Registrar under section 16(1)(b)

family trust has the same meaning as in section 5 of the Credit Contracts and Consumer Finance Act 2003

FATF means the Financial Action Task Force on Money Laundering established in Paris in 1989

FATF Recommendations means all of the following recommendations:

- (a) the 40 Recommendations adopted by FATF at its plenary meeting on 20 June 2003;
- (b) the Special Recommendations on Terrorist Financing adopted by FATF at its extraordinary plenary meeting on 31 October 2001;
- (c) Special Recommendation IX on Terrorist Financing adopted by FATF at its plenary meeting between 20 and 22 October 2004

financial adviser service has the meaning given by section 9 of the Financial Advisers Act 2008

financial service has the meaning given by section 5

financial service provider means a person who provides or offers to provide a financial service

in the business of providing a financial service has the meaning given by section 6

incorporated law firm has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

insurer means a person by whom or on whose behalf the risk or part of the risk to which any contract of insurance relates is accepted

lawyer has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

licensed means licensed, registered, authorised, or otherwise approved by a licensing authority

licensed provider means a person, identified in Schedule 2, who—

- (a) provides or offers to provide a licensed service; and
- (b) is licensed, registered, authorised, or otherwise approved by a licensing authority

licensed service means a financial service in respect of which a licensing enactment requires a person to be licensed (or to be exempt from that requirement) to—

- (a) provide the service; or
- (b) hold out that the person provides the service

licensing authority means a body, identified in Schedule 2, that licenses, registers, authorises, or otherwise approves a person to be a licensed provider

licensing enactment means an enactment identified in Schedule 2

member, in relation to a dispute resolution scheme, has the meaning given by section 48(2)

member of a local authority has the meaning given by section 5(1) of the Local Government Act 2002

Minister means—

- (a) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act and for Parts 1 and 2; and
- (b) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for Part 3

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

person includes a corporation sole, a body corporate, and an unincorporated body

prescribed means prescribed by this Act or by any regulations made under this Act

real estate agent means a person who is a licensee under the Real Estate Agents Act 2008

register means the register of financial service providers established and maintained under section 24

Registrar means the Registrar of Financial Service Providers appointed under section 35

related company has the meaning given by section 2(3) of the Companies Act 1993

reserve scheme has the meaning given by section 71

responsible financial service provider is a person declared to be a responsible financial service provider under section 23(1)

retail client has the meaning set out in section 49

senior manager means, in relation to a financial service provider, a person who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of that provider (for example, a chief executive or a chief financial officer)

tax agent has the meaning given by section 3(1) of the Tax Administration Act 1994

wholesale client has the meaning set out in section 49.

Section 4 **broker**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **broking service**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **chartered accountant**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **contract of insurance**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **conveyancing practitioner**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **financial adviser service**: amended, on 1 July 2010, by section 7(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **incorporated law firm**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **insurance business**: repealed, on 1 July 2010, by section 7(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **insurer**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **licensed**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **licensed service**: substituted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **licensing enactment**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **person**: amended, on 1 July 2010, by section 7(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **retail client**: inserted, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 4 **wholesale client**: added, on 1 July 2010, by section 7(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

5 **Meaning of financial service**

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

- (a) a financial adviser service:
- (ab) a broking service:
- (b) acting as a deposit taker as defined in the Reserve Bank of New Zealand Act 1989:
- (c) being a registered bank:
- (d) keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons:
- (e) providing credit under a credit contract:
- (f) operating a money or value transfer service:
- (g) issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money):
- (h) giving financial guarantees:
- (i) participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978):
 - (i) as an issuer of the securities:
 - (ii) as a promoter:
- (ia) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Se-

curities Act 1978) in respect of securities offered to the public:

- (i) as a trustee:
- (ii) as a unit trustee:
- (iii) as a superannuation trustee:
- (iv) as a manager:
- (j) changing foreign currency:
- (k) entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts on behalf of another person:
- (l) providing forward foreign exchange contracts:
- (m) acting as an insurer:
- (n) providing any other financial service that is prescribed for the purposes of New Zealand complying with the FATF Recommendations, other recommendations by FATF, or other similar international obligations that are consistent with the purpose of this Act.

Section 5(ab): inserted, on 1 July 2010, by section 8(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(i): substituted, on 1 July 2010, by section 8(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(ia): inserted, on 1 July 2010, by section 8(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 5(m): substituted, on 1 July 2010, by section 8(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

6 Meaning of in the business of providing a financial service

In this Act, **in the business of providing a financial service** means carrying on a business of providing or offering to provide a financial service (whether or not the business is the provider's only business or the provider's principal business).

7 Application of Act

- (1) This Act applies to persons who are in the business of providing a financial service.

- (2) None of the following persons are in the business of providing a financial service for the purposes of this Act to the extent this subsection applies to them:
- (a) a lawyer, incorporated law firm, conveyancing practitioner, chartered accountant, tax agent, or real estate agent providing a service in the ordinary course of business of the relevant kind;
 - (b) a government department listed in Schedule 1 of the State Sector Act 1988;
 - (c) the Reserve Bank of New Zealand (and any subsidiaries);
 - (d) the statutory entities listed in Schedule 1 of the Crown Entities Act 2004;
 - (e) a person engaged in terminating the business of a financial service provider after that provider has been deregistered;
 - (f) a non-profit organisation in respect of free financial services;
 - (g) an affiliated entity;
 - (h) an executor, administrator, or trustee in respect of services provided in the administration of an estate or a trustee in respect of services provided to beneficiaries of a family trust;
 - (i) a nominated representative (within the meaning of the Financial Advisers Act 2008) while acting in that capacity;
 - (j) an employer while providing services to enable employees of the employer to obtain rights or benefits under a registered superannuation scheme (as defined in section 2(1) of the Superannuation Schemes Act 1989) or a KiwiSaver scheme (as defined in section 4(1) of the KiwiSaver Act 2006), being a scheme in which that employer participates for the benefit of its employees;
 - (k) any person exempted, under regulations made under this Act or by or under any other enactment, from the application of this Act or from the requirement to register under this Act (to the extent of the relevant exemption).
- (3) If subsection (2) applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other

person while acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.

- (4) However, subsections (2) and (3) do not apply if, and to the extent that, any other enactment requires a person referred to in those subsections to be registered under this Act.

Section 7: substituted, on 1 July 2010, by section 9 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

8 Act binds the Crown

This Act binds the Crown.

8A Territorial scope

This Act applies to a person who—

- (a) is ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) or has a place of business in New Zealand, regardless of where the financial service is provided; or
- (b) is, or is required to be, a licensed provider under a licensing enactment.

Section 8A: inserted, on 1 July 2010, by section 10 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Part 2 Registration

9 Purpose of this Part

The purpose of this Part is to—

- (a) establish a compulsory public register of financial service providers to enable—
 - (i) the public to access information about financial service providers; and
 - (ii) the Registrar and other regulators to regulate financial service providers;
- (b) prohibit certain people from being involved in the management or direction of registered financial service providers;
- (c) conform with New Zealand's obligations under the FATF Recommendations.

10 Registration and deregistration

- (1) Registration under this Act continues until the registered person is deregistered.
- (2) Registration may not be transferred and may not vest by operation of law in any person other than the person registered under this Act.
- (3) A person is deregistered when the Registrar enters on the register that the person is deregistered.

**Subpart 1—No holding out or being in
business of providing financial service
unless registered**

Subpart 1: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Subpart 1: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

11 No being in business of providing financial service unless registered

- (1) A person to whom this Act applies must not be in the business of providing a financial service unless that person is registered for that service under this Part.
- (2) Every person who knowingly breaches subsection (1) commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or to both; or
 - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

Section 11: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 11: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 11(1): amended, on 1 July 2010, by section 11 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

12 No holding out that in business of providing financial service unless registered

- (1) A person to whom this Act applies must not—
- (a) hold out that the person is registered under this Act unless that person is registered under this Part; or
 - (b) hold out that the person is registered in respect of a particular service or entitled, qualified, able, or willing to be in the business of providing a financial service unless that person is registered for that service under this Part.
- (2) Every person who knowingly breaches subsection (1) commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000, or to both; or
 - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

Section 12: brought into force (in respect of financial services other than financial adviser services), on 1 December 2010, by clause 3 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 12: brought into force (in respect of financial adviser services), on 1 April 2011, by clause 4 of the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 (SR 2010/231).

Section 12(1): substituted, on 1 July 2010, by section 12 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Subpart 2—Registration of financial service provider

13 Qualifications for registration as financial service provider

A person is qualified to be registered as a financial service provider if—

- (a) the person is not disqualified under section 14; and
- (b) the person is a member of an approved dispute resolution scheme, or the reserve scheme, if required by section 48; and

- (c) if a licensing enactment requires the person to be a licensed provider, the person is, or will be (on and from commencing to be in the relevant business), a licensed provider.

Section 13(c): substituted, on 1 July 2010, by section 13 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

14 Disqualified person

- (1) A person is disqualified if,—
 - (a) in the case of an individual, the individual is disqualified under subsection (2); or
 - (b) in the case of a person who is not an individual, the person has a controlling owner, director, or senior manager who is disqualified under subsection (2).
- (2) The following persons are disqualified:
 - (a) an undischarged bankrupt;
 - (b) a person prohibited from being a director or promoter of, or concerned in the management of, an incorporated or unincorporated body under the Companies Act 1993, the Securities Act 1978, the Securities Markets Act 1988, or the Takeovers Act 1993;
 - (c) a person subject to a management banning order under the Securities Act 1978, the Securities Markets Act 1988, the Takeovers Act 1993, or subject to an order under section 108 of the Credit Contracts and Consumer Finance Act 2003;
 - (d) a person who has been convicted of an offence against section 11, 12, or 41 within the past 5 years;
 - (e) a person who has been convicted of an offence under sections 217 to 266 of the Crimes Act 1961 within the past 5 years;
 - (f) a person who has been convicted of a money laundering offence or an offence relating to the financing of terrorism;
 - (g) a person who is subject to a confiscation order under the Proceeds of Crime Act 1991.
- (3) A member of a local authority must be treated as if he or she is not disqualified.

*Application for registration as financial service
provider*

15 Application to be registered as financial service provider

- (1) An application to be registered as a financial service provider must be made to the Registrar and—
- (a) state the following (as relevant to the applicant):
 - (i) the name and business address of the applicant;
 - (ii) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the applicant is a member;
 - (iii) whether the application relates to a licensed service, and if so, which particular licensed service; and
 - (b) be in the form (if any) required by the Registrar; and
 - (c) confirm that the applicant is not disqualified under section 14; and
 - (d) contain, or be accompanied by, any other prescribed information or documents; and
 - (e) be accompanied by the prescribed fee or levy (if any).
- (2) If the application relates to a licensed service, it must be accompanied by any information required, by or under the licensing enactment, to become a licensed provider.

Section 15(1)(e): amended, on 1 July 2010, by section 14(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 15(2): amended, on 1 July 2010, by section 14(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

16 Registration of financial service provider

- (1) If the Registrar accepts that an applicant is qualified to be registered as a financial service provider, the Registrar must—
- (a) enter the following details on the register (as relevant to the provider):
 - (i) the name and business address of the provider;
 - (ii) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the provider is a member;
 - (iia) the type or types of financial service for which the provider is registered;

- (iii) if the provider is a licensed provider in relation to a particular licensed service, that fact and the name and business address of the relevant licensing authority;
 - (iv) any other information prescribed in regulations; and
 - (b) allocate a due date for the provider's annual confirmation, notify the provider of that date, and notify that date on the register.
- (2) If the Registrar does not accept that an applicant is qualified to be registered as a financial service provider, the Registrar must notify the applicant and any relevant licensing authority of the Registrar's decision.

Section 16(1)(a)(iia): inserted, on 1 July 2010, by section 15 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Changes relating to financial service provider

17 Duty to notify changes relating to financial service provider

- (1) Each of the following persons must notify the Registrar about the following relevant changes relating to a financial service provider:
- (a) a financial service provider, if—
 - (i) the provider knows that the provider is no longer qualified for registration in accordance with section 13; or
 - (ii) the provider is in a business of providing a financial service for which the provider is not registered; or
 - (iii) the provider knows that any details on the register are no longer correct;
 - (b) the licensing authority, if the licensing authority knows that a financial service provider has ceased to be licensed;
 - (c) the person responsible for an approved dispute resolution scheme or the reserve scheme of which a financial service provider was a member, if the person knows that the provider is no longer a member of that scheme.

- (2) The time within which a person must notify the Registrar under subsection (1) is 10 working days from the date the person comes to know about the change.
- (3) A financial service provider who breaches subsection (1)(a) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (4) A person who breaches subsection (1)(c) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Section 17(1)(a): substituted, on 1 July 2010, by section 16 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 17(1)(b): substituted, on 1 July 2010, by section 16 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Deregistration of financial service provider

18 Deregistration of financial service provider

- (1) The Registrar must deregister a financial service provider after a notice period in accordance with sections 19 and 20, if the Registrar is satisfied that the provider—
 - (a) is no longer qualified to be registered in accordance with section 13; or
 - (b) is not in the business of providing a financial service (at any time after the expiry of 3 months after registration); or
 - (c) has been registered because of a false or misleading representation or omission; or
 - (d) has proffered an application fee or annual confirmation fee or levy that has subsequently been dishonoured, declined, or reversed.
- (2) The Registrar must deregister a financial service provider if the provider so requests in writing, with effect from any future date requested. The Registrar must notify any relevant licensing authority of this deregistration.
- (3) For the purposes of this section and sections 19 and 20, **notice period** means 20 working days from the date of the Registrar's notification under section 19.

Section 18(1)(b): substituted, on 1 July 2010, by section 17(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 18(1)(d): amended, on 1 July 2010, by section 17(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

19 Notice of intention to deregister

- (1) The Registrar must notify a financial service provider and any relevant licensing authority of the Registrar's intention to deregister the provider under section 18(1).
- (2) The Registrar's notice must set out—
 - (a) that the Registrar intends to deregister the provider under section 18(1) (stating whichever paragraph applies); and
 - (b) the reasons why the Registrar considers the relevant paragraph in section 18(1) applies; and
 - (c) that there is a notice period before deregistration occurs during which the provider may object, under section 20, to the deregistration.

20 Objection to proposed deregistration of financial service provider

- (1) During the notice period, the financial service provider may object (with reasons) to the proposed deregistration under section 18(1).
- (2) If the Registrar receives an objection under subsection (1) within the notice period, the Registrar must consider the objection and must not proceed with a deregistration under section 18(1), unless the Registrar is satisfied that any of paragraphs (a) to (d) of section 18(1) applies.

21 Notification of deregistration of financial service provider

If the Registrar deregisters a financial service provider, the Registrar must notify—

- (a) the financial service provider, stating the provider's right of appeal to the High Court against the deregistration under section 42; and
- (b) any relevant licensing authority; and

- (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days.

Reregistration of financial service provider

22 Reregistration of financial service provider

- (1) The Registrar may reregister a financial service provider who was deregistered—
 - (a) on the grounds set out in section 18(1)(b) if the Registrar is satisfied that the financial service provider was still in the business of providing a financial service at the time of deregistration; or
 - (b) on the grounds set out in section 18(1)(d) if the Registrar is satisfied that the application fee or annual confirmation fee or levy has been paid.
- (2) A reregistration is effective from the date of deregistration as if the deregistration had not occurred.
- (3) If the Registrar reregisters a financial service provider, the Registrar must notify—
 - (a) the financial service provider; and
 - (b) any relevant licensing authority; and
 - (c) the public, by a notice that is publicly available on an Internet site (at all reasonable times) for not less than 20 working days.

Section 22(1)(b): amended, on 1 July 2010, by section 18 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Responsible financial service provider

23 Responsible financial service provider

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare (with or without conditions) that an entity is a responsible financial service provider.
- (2) The Minister may make a recommendation under subsection (1) only if—
 - (a) the entity has applied to the Minister to be declared a responsible financial service provider; and

- (b) the entity has affiliated entities who each would qualify to be registered as a financial service provider under section 13; and
 - (c) the Minister is satisfied that declaring the entity to be a responsible financial service provider is consistent with the purposes of this Act.
- (3) The Order in Council must identify the affiliated entities of the responsible financial service provider.

Subpart 3—Register of financial service providers

Register established

24 Register of financial service providers

The Registrar must establish and maintain a register of financial service providers.

25 Operation of and access to register

- (1) The register may be kept as an electronic register or in any other manner that the Registrar thinks fit.
- (2) The register must be available for access and searching by members of the public at all times unless suspended under subsection (3).
- (3) The Registrar may refuse access to the register or suspend its operation, in whole or in part,—
 - (a) if the Registrar considers that it is not practical to provide access to the register; or
 - (b) for any other reason that is prescribed by regulations made under this Act.

Compare: 2008 No 1 s 55(1), (2)

26 Purposes of register

The purposes of the register are—

- (a) to enable the public and any person referred to in paragraph (b) to—
 - (i) identify registered financial service providers; and
 - (ii) access information about—

- (A) the name and business address of a registered financial service provider; and
- (B) the approved dispute resolution scheme or the reserve scheme of which a registered financial service provider is a member (if required by section 48); and
- (BA) the type or types of financial service for which a financial service provider is registered; and
- (C) whether a registered financial service provider provides a licensed service; and
- (b) to assist any person in the exercise of the person's powers or the performance of the person's functions under this Act or any other enactment; and
- (c) to conform with New Zealand's obligations under the FATF Recommendations.

Section 26(a)(ii)(BA): inserted, on 1 July 2010, by section 19 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

27 Contents of register

The register must contain the following information about each registered person (to the extent that the information is relevant):

- (a) the registered financial service provider's name and business address;
- (b) the name and business address of the approved dispute resolution scheme or the reserve scheme of which the registered financial service provider is a member;
- (ba) the type or types of financial service for which the registered financial service provider is registered;
- (c) in relation to a licensed provider,—
 - (i) the relevant licensed service;
 - (ii) the name and business address of the relevant licensing authority;
- (d) any other information prescribed in regulations.

Section 27(ba): inserted, on 1 July 2010, by section 20 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

28 Annual confirmation

- (1) Each registered financial service provider must supply to the Registrar each year by the due date an annual confirmation of details relating to that provider.
- (2) The annual confirmation must—
 - (a) be in the form (if any) required by the Registrar and be accompanied by the prescribed fee (if any) and any levy payable by the provider; and
 - (b) confirm that the provider is not disqualified under section 14; and
 - (c) contain, or be accompanied by, any other prescribed information or documents.
- (3) If a registered financial service provider does not comply with subsection (1) by the due date, the Registrar may assume that the provider is no longer in the business of providing a financial service and sections 18 to 20 apply.

Section 28(2)(a): amended, on 1 July 2010, by section 21 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

29 Registrar must amend register in certain circumstances

The Registrar must amend the register if—

- (a) an annual confirmation contains information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in section 18(1) do not apply); or
- (b) a financial service provider informs the Registrar of information that is different from the information entered on the register (where the Registrar is satisfied that the situations described in section 18(1) do not apply); or
- (c) a licensing authority informs the Registrar that a registered financial service provider has become a licensed provider in relation to a particular licensed service; or
- (d) the Registrar is satisfied at any time that the register contains a typographical error or a mistake, or omits information supplied to the Registrar; or
- (e) regulations made under this Act require the Registrar to do so in circumstances specified by the regulations.

Section 29(e): substituted, on 1 July 2010, by section 22 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

30 Registrar may refuse to accept document

The Registrar may refuse to accept a document received by the Registrar under this Act if that document—

- (a) is not in the required form (if any); or
- (b) does not comply with prescribed requirements.

Searches of register

31 Searches of register

The register may be searched only by reference to the criteria specified in section 27(a) to (d) and any other criteria prescribed in regulations.

32 Search purposes

The register may be searched for the following purposes:

- (a) by an individual, or a person with the consent of the individual, for the purpose of searching for information about that individual in accordance with the Privacy Act 1993;
- (b) by a person for a purpose referred to in section 26;
- (c) by a person for the purpose of advising another person in connection with any of the purposes referred to in this section.

33 When search breaches information privacy principle

A person who searches a public register for personal information for a purpose that is not a purpose set out in section 32 must be treated, for the purposes of Part 8 of the Privacy Act 1993, as if that person has breached an information privacy principle under section 66(1)(a)(i) of that Act.

Compare: 2006 No 55 s 456

*Information sharing***34 Sharing information with other persons or bodies**

- (1) The Registrar may communicate to any of the persons or bodies referred to in subsection (4) any information that the Registrar—
 - (a) holds (other than on the register) in relation to the exercise of the Registrar's powers or the performance of the Registrar's functions and duties; and
 - (b) considers may assist the person or body in the exercise of its powers or the performance of its functions and duties.
- (2) The Registrar may use any information communicated to the Registrar by a person or body referred to in subsection (4) in the Registrar's exercise of the Registrar's powers or the performance of the Registrar's functions and duties.
- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.
- (4) The persons or bodies to which this section applies are—
 - (a) a licensing authority identified in Schedule 2;
 - (b) the New Zealand Police;
 - (c) the person responsible for an approved dispute resolution scheme;
 - (d) the person responsible for the reserve scheme;
 - (e) a prescribed agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing;
 - (f) a prescribed overseas agency that is the equivalent of the Registrar or of a body referred to in paragraphs (a) to (c), but only where there is a written agreement between the overseas agency and the Minister about sharing the information.

*Registrar of Financial Service Providers***35 Appointment of Registrar**

- (1) The chief executive must appoint a Registrar of Financial Service Providers under the State Sector Act 1988.
- (2) The person holding office as Registrar of Companies under the Companies Act 1993, immediately before the commence-

ment of this Act, is deemed to have been appointed as the first Registrar of Financial Service Providers in accordance with this section.

Compare: 1999 No 126 s 136

36 Power of Registrar to delegate

- (1) The Registrar may delegate to any person, either generally or particularly, any of the Registrar's functions, duties, and powers except the power of delegation.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Compare: 2003 No 12 s 62

Subpart 4—Registrar's inspection powers

37 Registrar's inspection powers

- (1) The Registrar, or a person authorised by the Registrar, may take any of the steps listed in subsection (2) for the purpose of ascertaining whether a person—
 - (a) is in the business of providing a financial service in breach of section 11; or
 - (b) is holding out or has held out that the person is in the business of providing a financial service in breach of section 12; or
 - (c) is qualified or has been qualified to be registered in accordance with section 13; or

- (d) has made a false or misleading representation or omission in breach of section 41.
- (2) The steps referred to in subsection (1) are the following:
 - (a) requiring a person to produce for inspection relevant documents within that person's possession or control:
 - (b) inspecting and taking copies of relevant documents:
 - (c) taking possession of relevant documents and retaining them for a reasonable time for the purpose of taking copies.
- (3) Any person who exercises powers under subsection (1) must make his or her authorisation from the Registrar available on request.
- (4) Nothing in this section limits or affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (5) A person must not obstruct or hinder the exercise of a power conferred by subsection (1).
- (6) If a registered financial service provider does not comply with a requirement under subsection (2)(a) within 20 working days from the date the requirement was notified to the provider, the Registrar may assume that the provider is no longer in the business of providing a financial service and sections 18 to 20 apply.
- (7) A person who knowingly fails to comply with a requirement under subsection (2) commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$30,000:
 - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.
- (8) A person who breaches subsection (5) commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$30,000:
 - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.
- (9) In this section, **relevant document** means a document that contains information relating to whether a person—

- (a) is in the business of providing a financial service or a particular financial service; or
- (b) is holding out or has held out that the person is in the business of providing a financial service in breach of section 12; or
- (c) is qualified or has been qualified to be registered in accordance with section 13; or
- (d) has made a false or misleading representation or omission in breach of section 41.

Compare: 1993 No 105 s 365

Section 37(9)(a): amended, on 1 July 2010, by section 23 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

38 Disclosure of information and reports

- (1) A person authorised by the Registrar for the purposes of section 37 who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must, if directed to do so by the Registrar, give the document, information, or report to—
 - (a) the Registrar; or
 - (b) the Minister; or
 - (c) the chief executive; or
 - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act.
- (2) A person authorised by the Registrar for the purposes of section 37 who has obtained a document or information in the course of making an inspection under that section or prepared a report in relation to an inspection under that section must not disclose that document, information, or report, except—
 - (a) in accordance with subsection (1); or
 - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
 - (c) subject to the approval of the Registrar, for the purposes of this Act; or
 - (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document.

- (3) A person who fails to comply with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Compare: 1993 No 105 s 366

39 Exercise of powers under section 37 not affected by appeal

- (1) Despite any other provision of any Act or any rule of law, if a person appeals or applies to the High Court in relation to an act or decision of the Registrar or a person authorised by the Registrar under section 37, until a decision on the appeal or application is given,—

- (a) the Registrar, or that authorised person, may continue to exercise the powers under that section as if no such appeal or application had been made; and
- (b) no person is excused from fulfilling an obligation under that section by reason of that appeal or application.

- (2) Subsection (3) overrides subsection (1).

- (3) If the appeal or application is allowed or granted,—

- (a) the Registrar must ensure that, as soon as is reasonably practicable after the court's decision is delivered, any copy of a document taken or retained under section 37 is destroyed; and
- (b) no information acquired under section 37 is admissible in evidence in any proceedings unless the court hearing the proceedings in which it is sought to adduce the evidence is satisfied it was not obtained unfairly.

Compare: 1993 No 105 s 371

Subpart 5—Miscellaneous

40 Offence also committed by director

If any financial service provider that is not an individual commits an offence against this Act, every director of the provider who knowingly authorises or knowingly fails to prevent the offence also commits an offence against this Act.

41 Offence to make false or misleading representation

- (1) Every person commits an offence who, in any document or information required by or for the purposes of this Part or by regulations (whether or not supplied to the Registrar),—
 - (a) makes a representation knowing that it is false or misleading in a material particular; or
 - (b) omits any matter knowing that the omission is false or misleading in a material particular.
- (2) A person who is convicted of an offence under subsection (1) is liable on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or to both; or
 - (b) in the case of a person who is not an individual, to a fine not exceeding \$300,000.

42 Appeals from Registrar's decisions

- (1) A financial service provider who is not satisfied with any of the following decisions of the Registrar may appeal to the High Court:
 - (a) not registering an applicant as a financial service provider under section 16;
 - (b) a deregistration under section 18;
 - (c) a decision of the Registrar or a person authorised by the Registrar under section 37.
- (2) The time within which an appeal under subsection (1) may be made is 20 working days after the date of notification of the decision, or within any further time that the court allows.
- (3) On appeal, the court may do any of the following:
 - (a) confirm, modify, or reverse the decision or any part of it;
 - (b) exercise any of the powers that could have been exercised by the Registrar in relation to the matter to which the appeal relates;
 - (c) refer the decision back to the Registrar with directions to reconsider the whole or a specified part of the act or decision.

43 Decisions continue in effect until appeal

Unless the High Court orders otherwise, a decision appealed against under section 42 continues in effect.

44 Regulations under Part 1 and this Part

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (aa) declaring a class of contract to be a contract of insurance for the purposes of this Act:
 - (a) prescribing a financial service for the purposes of section 5(n):
 - (ab) exempting any service or person or class of service or persons from the application of this Act, and prescribing the terms and conditions (if any) of the exemption:
 - (b) specifying information or documents to be included in, or provided with, applications, and requiring documents to be signed by specified persons:
 - (c) prescribing procedures, requirements, and other matters, not inconsistent with this Part or with the purposes described in section 26, relating to the register, including matters that relate to—
 - (i) the operation of the register:
 - (ii) the information or documents to be contained in the register:
 - (iii) access to the register:
 - (iv) search criteria for the register:
 - (v) fees that may be payable in order to search the register:
 - (d) prescribing either of the following types of agency:
 - (i) an agency that carries out supervisory or enforcement functions relating to money laundering or terrorist financing for the purposes of section 34; or
 - (ii) an overseas agency that is the equivalent of the Registrar or of a body referred to in section 34(4)(a) to (c) for the purposes of section 34:

- (e) prescribing fees payable to the Registrar in respect of any matter under this Act or the manner in which fees may be calculated;
 - (f) providing for any other matters contemplated by Part 1 or by this Part, necessary for its administration, or necessary for giving it full effect.
- (1A) The Minister must, in relation to a recommendation under subsection (1)(ab),—
 - (a) before making a recommendation, have regard to New Zealand’s obligations under the FATF Recommendations; and
 - (b) not make the recommendation unless the Minister is satisfied that the costs of compliance with this Act would be unreasonable or not justified by the benefit of compliance.
- (2) Without limiting subsection (1)(b), information or documents may be prescribed under that subsection for the purpose of assisting any person with the person’s powers, functions, or duties as a licensing authority under the relevant enactment identified in Schedule 2 (regardless of whether or not that information or documentation is collected for the purposes of this Part).
- (3) The Registrar may refuse to perform a function or exercise a power until a prescribed fee or levy is paid.
- (4) Any Order in Council made under subsection (1)(e) may—
 - (a) prescribe the method of payment of a fee; and
 - (b) authorise the Registrar to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons.
- (5) Any fee or amount payable to the Registrar is recoverable by the Registrar in any court of competent jurisdiction as a debt due to the Registrar.

Section 44(1): amended, on 1 July 2010, by section 24(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1)(aa): inserted, on 1 July 2010, by section 24(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1)(ab): inserted, on 1 July 2010, by section 24(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(1A): inserted, on 1 July 2010, by section 24(4) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 44(3): amended, on 1 July 2010, by section 24(5) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Review and report on operation of this Part

45 Ministry must review and report on operation of this Part

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
- (a) review the operation of this Part since the commencement of this section; and
 - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in this Part are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

46 Territorial scope

[Repealed]

Section 46: repealed, on 1 July 2010, by section 25 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Part 3
Dispute resolution

47 Purpose of this Part

The purpose of this Part is to promote confidence in financial service providers by improving consumers' access to redress from providers through schemes to resolve disputes. The schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.

**Subpart 1—Financial service provider must
be member of dispute resolution scheme**

**48 Financial service provider must be member of dispute
resolution scheme**

- (1) Every financial service provider must be a member of either an approved dispute resolution scheme, or the reserve scheme, in respect of a financial service provided to a retail client.
- (2) A **member**, in relation to an approved dispute resolution scheme or the reserve scheme, is a financial service provider who may be the subject of a complaint to that scheme.
- (3) However, this obligation does not apply—
 - (a) to a financial service provider if—
 - (i) it is in the business of providing financial services only because it is an issuer or promoter participating in 1 or more offers of securities to the public; and
 - (ii) doing so is not its only or principal business; or
 - (b) to a financial service provider if it is exempted from the obligation by or under any other Act or by regulations made under section 79.

Section 48(1): amended, on 1 July 2010, by section 26(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 48(3): added, on 1 July 2010, by section 26(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49 Who are retail clients

- (1) A retail client is any person who receives a financial service who is not a wholesale client.
- (2) The following persons who receive a financial service are wholesale clients in respect of that financial service:
 - (a) a person who is in the business of providing any financial service and receives the financial service in the course of that business;
 - (b) a person whose principal business is the investment of money or who, in the course of and for the purposes of the person's business, habitually invests money;

- (c) an entity to which at least 1 of the following applied at the end of each of the last 2 completed accounting periods:
 - (i) at the balance date, the net assets of the entity exceeded \$1 million:
 - (ii) the turnover of the entity for the accounting period exceeded \$1 million:
 - (d) a related body corporate (within the meaning of section 5B(2) of the Securities Markets Act 1988) of an entity to which paragraph (c) applies:
 - (e) a local authority, a Crown entity, a State enterprise, the Reserve Bank of New Zealand, and the National Provident Fund (and a company appointed under clause 3(1)(b) of Schedule 4 of the National Provident Fund Restructuring Act 1990):
 - (f) a person who falls within 1 or more of the categories listed in section 3(2), 5(2CB), or 5(2CBA) of the Securities Act 1978 if the service relates to securities that may be offered to that person, or that have been subscribed for by that person, in a private offer of securities:
 - (g) an eligible investor under section 49A:
 - (h) if the financial service is a financial adviser service or a broking service, a person who is a wholesale client in respect of that service under the Financial Advisers Act 2008.
- (3) If subsection (2) applies to a person (A), it applies equally to any controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A's business to the same extent as it applies to A.
- (4) In this section,—
- entity—**
- (a) includes a body corporate and an unincorporated body (including partners in a partnership, members of a joint venture, or the trustees of a trust) and the sole trustee of a trust acting in his, her, or its capacity as trustee of that trust; but
 - (b) does not include an individual

private offer of securities means an offer of securities that—

- (a) does not constitute an offer of securities to the public under section 3 of the Securities Act 1978; or
- (b) is exempt from Part 2 (other than sections 38B and 58) of that Act under section 5(2CB) or 5(2CBA) of that Act.

Section 49: substituted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49A Who are eligible investors

- (1) A client is an eligible investor if—
 - (a) the client certifies in writing that the client understands that, as a consequence of certifying himself, herself, or itself to be an eligible investor, the financial service provider may not be a member of an approved dispute resolution scheme; and
 - (b) the client states the reasons for this certification; and
 - (c) a financial service provider signs a written acceptance of the certification in accordance with section 49B.
- (2) A certification may be specific to a particular service or class of services or may be general (but is effective only in relation to services provided after all of the requirements of subsection (1)(a) to (c) are met).

Section 49A: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49B Acceptance of certification

- (1) A financial service provider must not accept a certification unless he, she, or it, having considered the client's reasons for the certification,—
 - (a) is satisfied that the client has been sufficiently advised of the consequences of the certification; and
 - (b) has no reason to believe that the certification is incorrect or that further information or investigation is required as to whether or not the certification is correct.
- (2) The person who accepts the certification of a client may be the person providing the financial services to the client (but does not need to be).

- (3) A financial service provider who accepts a certification without having complied with subsection (1) contravenes a wholesale certification requirement.
- (4) Contravention of this section may give rise to a pecuniary penalty order or compensatory order (*see* sections 79A and 79B).

Section 49B: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49C Revocation of certification

- (1) A client who is an eligible investor may revoke a certification, in relation to a financial service provider to whom the certification has been given, by giving the financial service provider a signed notification to that effect.
- (2) A revocation is effective only in relation to services provided after it is given.

Section 49C: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49D How to opt out of being wholesale client

- (1) A person may opt out of being a wholesale client, in relation to a financial service provider, by giving the financial service provider a signed notification to that effect.
- (2) A notification may be specific to a particular service, or class of services, or may be general for all services provided by the financial service provider to whom it is given.
- (3) A person may vary or revoke a notification in the same way as the notification may be given.
- (4) A notification (or variation or revocation of a notification) under this section is effective only in relation to services provided after it is given.
- (5) This section does not apply if a person is a wholesale client by reason of being an eligible investor.

Section 49D: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49E Giving revocation of certification or notification of opt out

- (1) A revocation of a certification under section 49C or a notification under section 49D is sufficiently given to a financial service provider if—
 - (a) it is provided to the financial service provider; or
 - (b) delivered or posted to the financial service provider at the person's business address stated on the register or (if not registered) the person's last known place of business in New Zealand; or
 - (c) sent by fax or email to the person's fax number or email address stated on the register.
- (2) The revocation or notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is faxed or emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person's part).

Section 49E: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49F Members of dispute resolution scheme must comply with rules and binding resolutions

- (1) A member of an approved dispute resolution scheme or the reserve scheme must comply with the rules of the scheme.
- (2) On the application of the person responsible for the scheme, a District Court may make an order requiring a member of the scheme to do either or both of the following:
 - (a) comply with the rules of the scheme;
 - (b) comply with a resolution of a complaint that constitutes a binding resolution under those rules (a **binding settlement**).
- (3) If a District Court is satisfied that the terms of a binding settlement of a complaint are manifestly unreasonable, the court's order under subsection (2) may modify the terms of the binding settlement.
- (4) If an order requiring a member to comply with a binding settlement includes a requirement that the member pay an amount of money to a person, that order (or part of the order) may be

enforced as if it were a judgment by a District Court for the payment of a sum of money.

Section 49F: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

49G Offence to fail to comply with District Court order

- (1) A member of an approved dispute resolution scheme or the reserve scheme who, knowing that the member is subject to an order made under section 49F, fails to comply with the order, or fails to comply with the order within the time or in the manner required by the order, commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.
- (2) Nothing in this section applies to an order or part of an order of a District Court referred to in section 49F(4).

Section 49G: inserted, on 1 July 2010, by section 27 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

**Subpart 2—Approval of dispute resolution
schemes**

50 Meaning of approved dispute resolution scheme

A dispute resolution scheme is an **approved dispute resolution scheme** if it has been approved by the Minister in accordance with this Part and that approval has not been withdrawn.

Approval of dispute resolution schemes

51 Application for approval

- (1) The person responsible for a dispute resolution scheme may apply to the Minister for approval of the scheme.
- (2) The applicant must submit the following with the application:
 - (a) the rules about the scheme:
 - (b) any other information that is prescribed concerning the considerations outlined in section 52:
 - (c) the prescribed fee (if any).

- (3) The Minister may request the applicant to supply further information or documentation relating to the matters referred to in subsection (2)(a) or (b).

52 Mandatory considerations for approval

- (1) When considering an application under section 51, the Minister must have regard to the following considerations in light of the principles listed in subsection (2):
- (a) whether the scheme has an appropriate purpose:
 - (b) whether the applicant has undertaken reasonable consultation on the scheme with members or potential members of the scheme, and persons (or their representatives) likely to be substantially affected by the scheme:
 - (c) whether the applicant has adequate funding to enable it to operate the scheme according to the scheme's purpose and in accordance with the rules about the scheme:
 - (d) whether the applicant's directors and senior managers are competent to manage a dispute resolution scheme:
 - (e) whether the scheme is capable of resolving disputes about the types of financial services provided by the members or potential members of the scheme:
 - (f) the amounts of money that complaints lodged with the scheme may be about, and whether those amounts are reasonable and appropriate:
 - (g) whether the rules about the scheme are adequate and comply with—
 - (i) the principles listed in subsection (2); and
 - (ii) the requirements of section 63:
 - (h) the number of currently approved dispute resolution schemes:
 - (i) the types of financial service providers that may be members of currently approved dispute resolution schemes:
 - (j) the proposed size of the scheme:
 - (k) the types of financial service providers that may be potential members of the scheme:
 - (l) any other applications for approval that have been made.

- (2) The principles are—
- (a) accessibility:
 - (b) independence:
 - (c) fairness:
 - (d) accountability:
 - (e) efficiency:
 - (f) effectiveness.

53 Minister must decide application for approval

- (1) The Minister must decide an application under section 51 by approving it or by rejecting it.
- (2) The Minister may only make a decision under subsection (1) after consultation with—
- (a) the Minister of Finance; and
 - (b) the Minister of Commerce.

54 Notification and publication of decision

The Minister must, as soon as practicable after deciding the application,—

- (a) notify the applicant of the decision; and
- (b) if the decision is to approve the application, ensure that—
 - (i) the approval is published in the *Gazette*; and
 - (ii) the chief executive updates the details described in section 78(2).

55 Reapplication by unsuccessful applicant

An applicant whose application has been rejected may at any time reapply under section 51.

Withdrawal of approval

56 Withdrawal of approval

- (1) The Minister may withdraw the approval of an approved dispute resolution scheme after a notice period in accordance with sections 57 and 58 for any or all of the following reasons:
- (a) there has been a breach of a prescribed requirement:
 - (b) there has been a failure to comply with the rules about the scheme:

- (c) the person responsible for the scheme has not maintained or published a list of current members as required by section 62:
 - (d) the person responsible for the scheme has not published the rules as required by section 64:
 - (e) the person responsible for the scheme has not supplied the Minister with any of the following:
 - (i) an annual report as required by section 68:
 - (ii) any further information requested by the Minister under section 69:
 - (iii) an independent review as required by the rule described in section 63(q):
 - (f) the person responsible for the scheme has not notified the Minister in accordance with section 65 before changing the rules about the scheme:
 - (g) the person responsible for the scheme has not complied with section 67:
 - (h) the scheme no longer satisfies the principles in section 52(2).
- (2) When considering whether to withdraw an approval, the Minister must have regard to the considerations referred to in section 52(1)(a) to (g) in light of the principles listed in section 52(2).
- (3) The Minister must withdraw the approval of an approved dispute resolution scheme if the person responsible for the scheme so requests, with effect from any future date requested.
- (4) For the purposes of this section and sections 57 and 58, **notice period** means 20 working days from the date of the Minister's notification under section 57(1).

57 Notice of intention to withdraw approval

- (1) The Minister must notify the person responsible for the approved dispute resolution scheme of the Minister's intention to withdraw the scheme's approval under section 56(1).
- (2) The Minister's notice must set out—
- (a) that the Minister intends to withdraw the scheme's approval for any or all of the grounds described in section 56(1) (stating which apply); and

- (b) the reasons why the Minister considers any or all of the grounds described in section 56(1) apply; and
 - (c) that there is a notice period before the withdrawal of the scheme's approval during which the person responsible for the scheme may object, under section 58, to the intended withdrawal.
- (3) The Minister's notice may require the person responsible for the scheme to—
 - (a) notify all members of the Minister's intention to withdraw the scheme's approval; or
 - (b) provide the Minister with a list of the names and business addresses of current members so that the Minister can, if the Minister wishes, notify all members of the Minister's intention to withdraw the scheme's approval.

58 Objection to intended withdrawal of approval

- (1) During the notice period, the person responsible for an approved dispute resolution scheme—
 - (a) may object (with reasons) to the intended withdrawal of the scheme's approval under section 56(1); and
 - (b) must not accept any new members.
- (2) If the Minister has received an objection under subsection (1) within the notice period, the Minister must consider it and must not proceed with a withdrawal under section 56(1) unless the Minister is satisfied that any or all of the reasons set out in section 56(1) apply.

59 Approval is withdrawn from date person responsible for scheme is notified

If the Minister withdraws a scheme's approval, the scheme's approval is withdrawn from the date the person responsible for the scheme is notified under section 60(a).

60 Notification and publication of withdrawal of approval

The Minister must, as soon as practicable after withdrawing the approval of a dispute resolution scheme,—

- (a) notify the person responsible for the scheme; and
- (b) notify the Registrar; and
- (c) ensure the withdrawal is published in the *Gazette*; and

- (d) ensure the chief executive updates the details described in section 78(2).

61 Effect of withdrawal of approval on members of dispute resolution scheme

On the date that a dispute resolution scheme's approval is withdrawn, members of the scheme become members of the reserve scheme.

List of members of approved dispute resolution scheme

62 List of members

The person responsible for an approved dispute resolution scheme must maintain a list of the scheme's current members and must publish this list on an Internet site that is publicly available (at all reasonable times).

Rules about approved dispute resolution scheme

63 Rules about approved dispute resolution scheme

The person responsible for an approved dispute resolution scheme must issue rules about that scheme, and those rules must provide for, or set out, the following:

- (a) which types of financial service providers may be members of the scheme (all providers of that type must be eligible):
- (b) how financial service providers become members of the scheme and how membership is terminated:
- (c) that consumers and businesses that have no more than 19 full-time equivalent employees may make complaints for resolution by the scheme:
- (d) how complaints about a member may be made for resolution by the scheme:
- (e) a period after which the scheme, if asked by a complainant, must investigate a complaint that has been made directly to a member:
- (f) that complaints about members must be investigated in a way that is consistent with the rules of natural justice:

- (g) that the scheme has jurisdiction in respect of a breach of contract, statutory obligation, or industry code, or any other matter provided for in the rules:
- (h) that any information may be considered in relation to a complaint and any inquiry made that is fair and reasonable in the circumstances:
- (i) the remedial action that the scheme can impose on a member to resolve a complaint (for example, a requirement to change systems or to compensate a complainant up to a certain amount stated in the rules):
- (j) how remedial action may be enforced against the scheme's members, including after members have left the scheme:
- (k) that a financial service provider who has not taken remedial action imposed on that provider by another approved dispute resolution scheme or the reserve scheme cannot join the scheme:
- (l) that the scheme will not charge a fee to any complainant to investigate or resolve a complaint:
- (m) that a resolution of a complaint about a member of the scheme is binding on the member concerned:
- (n) that a resolution of a complaint about a member of the scheme is binding on the complainant concerned, if the complainant accepts the resolution:
- (o) that the complainant may take alternative court action against the member at any time, including if the complainant rejects the resolution:
- (p) that the scheme may cease investigating and resolving a complaint if the complainant takes alternative court action against the member:
- (q) that an independent review of the scheme must occur at least once every 5 years after the date of the scheme's approval and must be supplied to the Minister within 3 months of completion:
- (r) that the person responsible for the scheme and the scheme's members must inform the people referred to in paragraph (c) about the scheme.

Section 63(g): substituted, on 1 July 2010, by section 28 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

64 Obligation to publish rules

The person responsible for an approved dispute resolution scheme must make copies of the rules about the scheme available for inspection by the public, free of charge,—

- (a) at the scheme's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times).

65 Duty to notify change to rules

The person responsible for an approved dispute resolution scheme must notify the Minister if the person wishes to change the rules about the scheme.

66 Minister's consideration of change of rules

- (1) After receiving a notification under section 65, the Minister may notify the person responsible for a scheme that the Minister—
 - (a) approves the change; or
 - (b) considers the proposed change is not adequate and does not comply with—
 - (i) the principles listed in section 52(2); and
 - (ii) the requirements of section 63.
- (2) If subsection (1)(b) applies, the rule change must not be made.
- (3) If the Minister does not notify the person responsible for the scheme in accordance with subsection (1) within 45 working days of the notification of the change of rules, the change is treated as having been approved by the Minister.

67 Duty to co-operate and communicate information in certain circumstances

The person responsible for an approved dispute resolution scheme must—

- (a) co-operate with other approved dispute resolution schemes and with the reserve scheme if a complaint involves members of those other schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and

- (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with sections 17 and 34; and
- (c) if there is a series of material complaints about a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority;
- (d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.

Section 67(d): added, on 1 July 2010, by section 29 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

*Annual reports and information requests by
Minister*

68 Annual report

The person responsible for an approved dispute resolution scheme must supply to the Minister, within 3 months after the end of the financial year applying to the scheme, an annual report containing prescribed information about the scheme in relation to that financial year.

69 Person responsible for approved dispute resolution scheme must supply further information on Minister's request

- (1) The person responsible for an approved dispute resolution scheme must supply to the Minister—
 - (a) any further information requested by the Minister about the information that is required by regulations to be in an annual report; and
 - (b) any information requested by the Minister about the scheme's compliance with the principles listed in section 52(2).
- (2) In supplying the information to the Minister, the person must disclose personal information in accordance with the Privacy Act 1993 and protect information that is subject to an obligation of confidentiality.

70 Annual report and information requested by Minister to be publicly available

The person responsible for an approved dispute resolution scheme must make copies of its annual report available for inspection by the public, free of charge,—

- (a) at the scheme's head office (during ordinary office hours); and
- (b) on an Internet site in an electronic form that is publicly available (at all reasonable times).

Subpart 3—Reserve scheme

71 Reserve scheme

The reserve scheme is a dispute resolution scheme that has been appointed by Order in Council under section 72 to fulfil the functions of the reserve scheme.

Appointment of reserve scheme

72 Appointment of reserve scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
 - (a) appoint a dispute resolution scheme to fulfil the functions of the reserve scheme (with or without conditions) for a term recommended by the Minister; and
 - (b) prescribe rules about the functions of the reserve scheme; and
 - (c) prescribe rules about the funding of the reserve scheme (*see* section 72A).
- (2) Rules made under subsection (1)(b) must provide for equivalent matters to those required by section 63 to be provided for, or set out, in the rules of an approved dispute resolution scheme.
- (3) The Minister may make a recommendation only if—
 - (a) the person responsible for the scheme consents in writing to the scheme being appointed to fulfil the functions of the reserve scheme in accordance with the rules made under subsection (1)(b); and
 - (b) the Minister is satisfied that the person responsible for the scheme and the scheme itself are capable of resolv-

- ing disputes relating to all types of providers of all types of financial services; and
- (c) the Minister is satisfied that the scheme is a formally constituted dispute resolution body with demonstrable experience; and
 - (d) the Minister is satisfied that the person responsible for the scheme and the scheme itself are capable of fulfilling the functions of the reserve scheme in accordance with the rules made under subsection (1)(b).
- (4) The Minister may recommend an Order in Council described in subsection (1)(a) only after consultation with—
- (a) the Minister of Finance; and
 - (b) the Minister of Commerce.
- (5) The Minister may recommend an Order in Council described in subsection (1)(b) only after consultation with—
- (a) the Minister of Finance; and
 - (b) the Minister of Commerce; and
 - (c) any persons (or their representatives) that the Minister considers are likely to be substantially affected by the recommendation.
- (6) A failure to comply with subsection (5)(c) does not affect the validity of an Order in Council made under subsection (1).
- (7) Conditions that may be imposed by an Order in Council may relate to any or all of the following:
- (a) the governance arrangements relating to the reserve scheme;
 - (b) other prescribed matters that relate to the principles listed in section 52(2).
- (8) The Minister's first recommendation for an Order in Council referred to in subsection (1) must be made within 2 years of this section coming into force.

Section 72(1)(b): amended, on 1 July 2010, by section 30 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 72(1)(c): added, on 1 July 2010, by section 30 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

72A Reserve scheme: rules about fees and charges

- (1) Rules made under section 72(1)(c) may—
 - (a) provide for an applicant for membership, or for renewal of membership, to pay a fee in respect of the application:
 - (b) require members to pay a membership fee:
 - (c) if a complaint is made about a member, require the member to pay a charge in respect of the complaint in circumstances provided in the rules:
 - (d) exempt a person or class of persons from liability to pay a fee or charge in whole or in part:
 - (e) provide for the refund or waiver of a fee or charge, in whole or in part, for a person or class of persons:
 - (f) provide for the termination of the membership of a member who fails to pay a fee or charge within the period provided in the rules.
- (2) The charge under subsection (1)(c) may be—
 - (a) a fixed amount; or
 - (b) an amount calculated by reference to the costs of investigating and determining the complaint; or
 - (c) a combination of the amounts referred to in paragraphs (a) and (b).
- (3) Rules for the purposes of this section may make different provision for different classes of financial service provider.

Section 72A: inserted, on 1 July 2010, by section 31 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

73 Revocation of appointment as reserve scheme

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, revoke an appointment made under section 72(1)(a).
- (2) The Minister may make a recommendation only for any or all of the following reasons:
 - (a) there has been a failure to fulfil the functions of the reserve scheme as required by rules made under section 72(1)(b):
 - (b) there has been a breach of a condition of appointment:

- (c) the person responsible for the reserve scheme requests that the scheme's appointment as the reserve scheme be revoked.
- (3) The Minister may make a recommendation for the reasons set out in subsection (2)(a) or (b) only after consultation with—
 - (a) the Minister of Finance; and
 - (b) the Minister of Commerce.
- (4) At the same time as making a recommendation under subsection (1), the Minister must recommend that the Governor-General appoint another dispute resolution scheme to fulfil the functions of the reserve scheme under section 72(1)(a) for a term recommended by the Minister.

74 Notice of intention to recommend revocation of appointment as reserve scheme under section 73(2)(a) or (b)

- (1) The Minister must notify the person responsible for the reserve scheme that the Minister intends, under section 73(2)(a) or (b), to recommend a revocation of the reserve scheme's appointment.
- (2) The Minister's notice must set out—
 - (a) that the Minister intends, under section 73(2)(a) or (b), to recommend a revocation of the reserve scheme's appointment; and
 - (b) the reasons why the Minister considers that section 73(2)(a) or (b) apply; and
 - (c) that there is a notice period during which the person responsible for the reserve scheme may object, under section 75, to the intended recommendation.
- (3) For the purposes of this section and section 75, **notice period** means 20 working days from the date of the Minister's notification under subsection (1).

75 Objection to intended recommendation for revocation

- (1) During the notice period, the person responsible for the reserve scheme may object (with reasons) to the Minister's intention, under section 73(2)(a) or (b), to recommend a revocation of the reserve scheme's appointment.

- (2) If the Minister has received an objection under subsection (1) within the notice period, the Minister must consider the objection and must not proceed with a recommendation for a revocation of the reserve scheme's appointment under section 73(2)(a) or (b) unless the Minister is satisfied that section 73(2)(a) or (b) apply.

76 Duty to co-operate and communicate information in certain circumstances

The person responsible for a reserve scheme must—

- (a) co-operate with approved dispute resolution schemes if a complaint involves members of those schemes (disclosing personal information in accordance with the Privacy Act 1993 and protecting information that is subject to an obligation of confidence); and
- (b) co-operate with the Registrar, including by communicating information to the Registrar in accordance with sections 17 and 34; and
- (c) if there is a series of material complaints about a particular licensed provider or class of licensed provider, communicate that fact to the relevant licensing authority;
- (d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.

Section 76(d): added, on 1 July 2010, by section 32 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Levy to fund reserve scheme
[Repealed]

Heading: repealed, on 1 July 2010, by section 33 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

77 Levy to fund reserve scheme
[Repealed]

Section 77: repealed, on 1 July 2010, by section 33 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Subpart 4—Miscellaneous

*Publication of details relating to approved
dispute resolution schemes and reserve scheme***78 Publication of details relating to approved dispute
resolution schemes and reserve scheme**

- (1) The chief executive—
- (a) must ensure that the details described in subsection (2) are available for inspection by the public, free of charge, at the head office of the Ministry (during ordinary office hours), and on an Internet site that is publicly available (at all reasonable times);
 - (b) may make copies of the details available in any other way that the chief executive considers appropriate in the circumstances.
- (2) The details are—
- (a) the names of approved dispute resolution schemes and the name and business address of the person responsible for each scheme; and
 - (b) the name of the reserve scheme and the name and business address of the person responsible for the reserve scheme.

Levy

Heading: inserted, on 1 July 2010, by section 34 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

78A Levy

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring registered financial service providers (or a prescribed class of financial service providers) to pay a levy to the Minister.
- (2) The purpose of the levy is to meet, in whole or in part, the costs of—
- (a) the Ministry's functions under this Part (including the costs of collecting the levy); and

- (b) the reserve scheme (to the extent that these are not met by fees and charges imposed in rules made under section 72(1)(c)).
- (3) Regulations under this section may—
 - (a) specify an amount payable as the levy or a method of calculating or ascertaining the levy (which may be based on the estimated costs):
 - (b) include or provide for including in the levy any shortfall in recovering the actual costs:
 - (c) refund or provide for refunds of any over-recovery of those actual costs:
 - (d) specify the financial year or part financial year to which the levy applies, and apply the levy to that financial year and each subsequent financial year until the levy is revoked or repealed:
 - (e) for the first financial year to which the levy applies, include in the levy costs from 1 January 2009:
 - (f) require payment of a levy for a financial year or part financial year irrespective of the fact that the regulations may be made after that financial year has commenced:
 - (g) provide for the collection and payment of the levy, including the time by which the levy must be paid:
 - (h) exempt a person or class of persons from liability to pay the levy, in whole or in part:
 - (i) provide for a waiver or refund of the levy, in whole or in part, for a person or class of persons:
 - (j) provide for interest to be paid if a person fails to pay the levy by the due date.
- (4) Regulations under this section may make different provision for different classes of registered financial service providers including, without limitation, for—
 - (a) members of the reserve scheme:
 - (b) members of approved dispute resolution schemes:
 - (c) those who provide different types of financial service.
- (5) The levy is recoverable as a debt due to the Crown.
- (6) Before making a recommendation under subsection (1), the Minister must consult with persons or representatives of persons that the Minister considers are likely to be substantially affected by the proposed regulations.

- (7) A failure to comply with subsection (6) does not affect the validity of the regulations.

Section 78A: inserted, on 1 July 2010, by section 34 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Regulations under this Part

79 Regulations under this Part

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:
- (a) exempting any person or class of persons from the obligation to be a member of either an approved dispute resolution scheme or the reserve scheme, and prescribing the terms and conditions (if any) of the exemption;
 - (b) prescribing the information or documents to be supplied to the Minister as part of an application under this Part;
 - (c) prescribing processes for applications for the approval of dispute resolution schemes;
 - (d) prescribing rules for a class of approved dispute resolution scheme or for all approved dispute resolution schemes in the event that approval of those schemes is withdrawn;
 - (e) prescribing the information that must be included in every annual report supplied in accordance with section 68, which must include—
 - (i) information about any independent review that occurred within the previous 12 months; and
 - (ii) information about a scheme's operation (including complaints received);
 - (f) prescribing fees payable in respect of any matter under this Part or the manner in which fees may be calculated;
 - (g) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (1A) The Minister must not recommend the making of regulations under subsection (1)(a), unless the Minister is satisfied that—
- (a) the exemption is consistent with the purposes of this Act; and

- (b) the costs of compliance with the obligation would be unreasonable or not justified by the benefits of compliance.
- (2) The Minister may refuse to make a decision under this Part until the prescribed fee is paid.
- (3) Any Order in Council made under subsection (1) may—
 - (a) prescribe the method of payment of a fee; and
 - (b) authorise the Minister to refund or waive, in whole or in part and on any prescribed conditions, payment of a fee in relation to any person or class of persons.
- (4) Any fee or amount payable under this Part is recoverable in any court of competent jurisdiction as a debt due to the Crown.

Section 79(1): amended, on 1 July 2010, by section 35(1) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79(1)(a): substituted, on 1 July 2010, by section 35(2) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Section 79(1A): inserted, on 1 July 2010, by section 35(3) of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

*Pecuniary and compensatory orders
for contravening wholesale certification
requirement*

Heading: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

79A Pecuniary order for contravening wholesale certification requirement

- (1) The High Court may, on application by the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person has, without reasonable excuse, contravened a wholesale certification requirement under section 49B.
- (2) The amount of the pecuniary penalty must not, in respect of each act or omission, exceed \$100,000 in the case of an individual or \$300,000 in the case of an entity.

- (3) In setting the amount of the pecuniary penalty, the court must take into account all of the following matters:
 - (a) the nature and extent of the contravention:
 - (b) the nature and extent of any loss or damage suffered by a person as a result of the contravention, including the effect on a person of the loss of the opportunity to make a complaint to an approved dispute resolution scheme or the reserve scheme:
 - (c) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence):
 - (d) whether the person has previously been found by the court in proceedings under this Act to have engaged in similar conduct.
- (4) A financial service provider may not be liable to more than 1 pecuniary penalty in respect of the same conduct.
- (5) Proceedings under this section may be commenced at any time within 3 years after the contravention occurred.

Section 79A: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

79B Compensation for contravention of wholesale certification requirement

- (1) If the court orders a person to pay a pecuniary penalty under section 79A in respect of the contravention of a wholesale certification requirement, the court may, in addition, order a person to pay compensation to any person who has suffered, or is likely to suffer, loss or damage as a result of the contravention (the **aggrieved person**).
- (2) An application for orders under this section may be made by the Commission or any aggrieved person.
- (3) The application must be made within 1 year of the date of the pecuniary penalty order.
- (4) The court may make an order under this section whether or not any aggrieved person is a party to the proceedings.
- (5) In proceedings under this section, the court may make such orders as it thinks fit.

Section 79B: inserted, on 1 July 2010, by section 36 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Review and report on operation of this Part

80 Ministry must review and report on operation of this Part

- (1) The Ministry must, not later than 5 years after the commencement of this section,—
 - (a) review the operation of this Part since the commencement of this section; and
 - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in this Part are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

Consequential amendment

81 Consequential amendment

The enactment specified in Schedule 1 is amended in the manner indicated in that schedule.

Schedule 1
Consequential amendment

s 81

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert the following item in its appropriate alphabetical order:

Financial Service Providers (Registration and Dispute Resolution) Act 2008

Section 24

Schedule 2
**Licensing authorities and licensed
providers**

s 4

This schedule identifies—

- (a) bodies who are licensing authorities; and
- (b) the persons that each licensing authority licenses, registers, authorises, or otherwise approves to provide a licensed service; and
- (c) the enactments that require the relevant financial service to be provided only by a person who is licensed, registered, authorised, or otherwise approved by that licensing authority.

Licensing authority	Licensed provider	Enactment
Securities Commission	Authorised financial advisers and qualifying financial entities	Financial Advisers Act 2008
Reserve Bank of New Zealand	Registered banks	Reserve Bank of New Zealand Act 1989

Schedule 2: amended, on 1 July 2010, by section 37 of the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2010 (2010 No 41).

Contents

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Notes

1 General

This is a reprint of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The reprint incorporates all the amendments to the Act as at 1 April 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 ***List of amendments incorporated in this reprint
(most recent first)***

Financial Service Providers (Registration and Dispute Resolution) Act
Commencement Order 2010 (SR 2010/231)

Financial Service Providers (Registration and Dispute Resolution) Amendment
Act 2010 (2010 No 41)
