

A blurred background image showing several people in a meeting or office setting, with a focus on their faces and upper bodies. The image is overlaid with a dark blue horizontal band containing the main title and speaker information.

**BELL GULLY**

# **Financial Services Law Reform and Trans-Tasman Securities Offerings in New Zealand**

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# Introduction

Two main parts:

## 1. Financial services law reform

- Overview
- Registration of financial service providers
- NBDTs
- Financial advisers
- Trustees

## 2. Trans-Tasman securities offerings

## Financial services law reform - overview

- Current law piecemeal, inconsistent, antiquated in parts
- No comprehensive financial services legislation
- Regulatory shortcomings noted by FATF
- Two separate, but related reviews commenced in 2004/5
- Result is two-phase legislative reform
- Phase one legislation to be passed in 2008
- Phase two policy decisions by end of 2007 (insurance, supervision of collective investment schemes and debt issuers, disclosure requirements for securities issuers and regulation of platform and portfolio management services)

# Financial services law reform – registration of financial service providers

Who is affected?	Current regime	New regime
<p>Banks Finance companies Financial advisers Issuers of securities Trustees Insurers Investment brokers Securities/futures dealers Leasing businesses Money transfer services Money and currency changers</p>	<ul style="list-style-type: none"> <li>• Registered banks regulated by RBNZ</li> <li>• Sharebrokers, futures dealers and trustees must be licensed/authorised</li> <li>• No registration/licensing as such for the others</li> </ul>	<ul style="list-style-type: none"> <li>• Mandatory registration with Registrar of Companies</li> <li>• Negative assurance checks on controlling shareholders, directors and senior managers</li> <li>• Specify financial services provided</li> <li>• Specify membership of dispute resolution scheme (if deal with consumers)</li> <li>• Annual update</li> </ul>

# Financial services law reform – NBDTs

<b>Who is affected?</b>	<b>Current regime</b>	<b>New regime</b>
<p>NBDTs are entities whose core business involves offering deposits/deposit-like securities to the public and lending money or providing other financial services (eg, finance companies)</p>	<ul style="list-style-type: none"> <li>• No licensing, registration or prudential supervision</li> <li>• Borrowing (at retail level) subject to Securities Act</li> <li>• Lending (at retail or wholesale level) subject to CCCFA</li> </ul>	<ul style="list-style-type: none"> <li>• Licensed by RBNZ</li> <li>• Minimum prudential, governance and “fit and proper” requirements (including minimum capital levels)</li> <li>• Mandatory credit rating from approved agency</li> <li>• Trustee supervision for debt securities to continue</li> </ul>

# Financial services law reform – financial advisers



Who is affected?	Current regime	New regime
<p>Entities whose business includes giving opinions, recommendations and guidance on financial products and investment and savings decisions to members of the public</p>	<p>Various disclosures required under IADA</p>	<ul style="list-style-type: none"> <li>• Co-regulation by Sec Com and APBs</li> <li>• Statutory conduct obligations (eg, exercise reasonable care, diligence, skill and integrity)</li> <li>• Statutory disclosure obligations (eg, qualifications, APB membership, remuneration and any criminal convictions)</li> <li>• Additional conduct and disclosure obligations where client money handled</li> <li>• Framework will primarily apply to individuals, not corporates</li> </ul>

# Financial services law reform – trustees

<b>Who is affected?</b>	<b>Current regime</b>	<b>New regime</b>
Trustees of debt securities/collective investment schemes issued to the public	Sec Com approval required	<ul style="list-style-type: none"> <li>• Sec Com will license trustees</li> <li>• Licensing process to include “fit and proper” checks, capital adequacy, infrastructure and professional indemnity insurance</li> <li>• NZ residency requirement, but exemption available if sufficiently supervised offshore (eg, in Australia)</li> <li>• Ongoing Sec Com monitoring</li> </ul>

# Trans-Tasman securities offerings

Who is affected?	Current regime	New regime
<p>Entities offering securities in either New Zealand or Australia that want to extend the offer to the other jurisdiction</p>	<ul style="list-style-type: none"> <li>• (From the New Zealand perspective) New Zealand prospectus and IS generally required to extend Australian offer into New Zealand</li> <li>• Certain exemptions available</li> </ul>	<ul style="list-style-type: none"> <li>• Exemption from prospectus/IS requirements for “regulated offers” (offers by an Australian issuer that require a PDS or similar offer document under the Corporations Act)</li> </ul>

# Glossary

- APB - Approved professional body
- CCCFA - Credit Contracts and Consumer Finance Act
- FATF - Financial Action Task Force
- IADA - Investment Advisers (Disclosure) Act
- IS - Investment Statement
- NBDT - Non-bank deposit taker
- PDS - Product disclosure statement
- RBNZ - Reserve Bank of New Zealand
- Sec Com - Securities Commission