

New Zealand Financial Service Provider structure – Quality advice and local presence the keys



Waikato River, Hamilton, New Zealand

Is your international financial services business concept ready to take off?

Do you need a stable jurisdiction with the freedom to start small and to plan big?

Touching your business down in New Zealand could be the way to secure the space and financial services freedom to take off and bring your financial services to the world.

We may be able to provide you with the support and structuring to launch with confidence.

Benefits of a New Zealand Financial Service Provider

New Zealand Financial Service Providers (FSPs) can provide the following financial services without additional licencing to international and wholesale customers:

- Banking services and accepting deposits
- Issuing and promoting securities
- Financial adviser service
- broking service (including a custodial service)
- keeping, investing, administering, or managing money, securities, or investment portfolios on behalf of other persons
- providing credit under a credit contract
- operating a money or value transfer service
- issuing and managing means of payment (for example, credit and debit cards, cheques, travellers' cheques, money orders, bankers' drafts, and electronic money)
- giving financial guarantees
- changing foreign currency
- 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
- providing forward foreign exchange contracts

The following services may also be provided and are generally not considered to be financial services under New Zealand law:

- Trust and company service provider
- Trustee services
- Accounting and/or tax preparer service
- Safe deposit box services

(These services may have AML/CFT obligations but, by themselves, are not be required to registered as FSPs.)

New Zealand advantages:

- Excellent reputation, OECD and FATF member country, least corrupt country in the world
- Excellent financial services environment
- Good personal privacy laws – recognised as adequate by the European Commission
- Excellent general business environment – second easiest place in the world to do business according to the World Bank
- Official recognition of Financial Service Provider status, with apostille available
- No taxes on international customers and income they derive from or through a New Zealand FSP, and no European Savings Tax Directive
- AML/CFT supervisor arrangements help demonstrate AML/CFT supervision and regulation to international FATF standards
- 28% company tax rate on worldwide income of the FSP, or can be structured so that the FSP and its owners only pay tax on New Zealand-source income using the Look-Through-

Company status or New Zealand resident foreign trustee structure or the New Zealand Limited Partnership entity structure.

- Full credit of tax paid at the company level to shareholders when paid out as dividend income (i.e. no double-taxation within NZ).
- Possible migration or retirement destination – a New Zealand business may help in obtaining residency.

New Zealand requirements:

- New Zealand entity structure – normally a New Zealand incorporated company, or New Zealand Limited Partnership. This includes a registered office for maintaining statutory and accounting records.
- Dispute resolution scheme membership to facilitate hearing and settling customer complaints against the FSP
- Internal complaints handling procedures, including a complaints manager, complaints register, and training for relevant employees.
- New Zealand place of business where the financial services are to be provided from – financial services can be provided partly from outside New Zealand and partly from inside New Zealand, however a place of business in New Zealand is required and it does need some connection to the management and delivery of the financial services.
- New Zealand FSP registration: this involves criminal record checks on directors, senior managers and controlling owners, and may involve review of your business by the Financial Service Providers Registrar and the Financial Markets Authority
- New Zealand resident director – this is a new statutory requirement for all New Zealand companies, and it also helps show and support your New Zealand business presence
- New Zealand Inland Revenue Department number and appropriate registrations depending on tax structuring and Approved Issuer status if applicable.
- New Zealand law (the Double Tax Agreements (United States of America – FATCA) Order 2014), requires compliance with FATCA, based on the Inter-Government Agreement. IRS registration is required.
- AML/CFT risk assessment and compliance programme, compliance officer appointment and PEP/sanctions screening subscription or an out-sourced Customer Due Diligence contract with an external provider. Registration for web access with the Financial Intelligence Unit of the New Zealand Police.
- Privacy Officer appointment.

In addition to these New Zealand requirements, in order to effectively operate as a financial institution the entity will need appropriate IT systems and services of which an internet banking platform and hosting is the most visible and essential. Having functional and adequate accounting systems and banking/clearing arrangements are another essential requirement for any financial institution and can create additional nexus with New Zealand.

Too good to be true?

New Zealand's excellent institutions and open availability have unfortunately resulted in attracting the wrong kind of entrepreneur – international criminals. As often happens, a few bad operators can spoil the conditions and opportunities for legitimate international financial services entrepreneurs,

however the New Zealand authorities have been both determined to weed out rogue operators and careful not to impede legitimate business with onerous and prescriptive regulations.

These changes have been ongoing since the late 2000s, as policy makers have moved to bring New Zealand's laws into line with international practice in a number of areas. This has involved some additional regulations such as FSP registration requirements, and additional AML/CFT documentation and controls for financial services businesses in response to FATF recommendations and reviews. The authorities have been judicious in responding to these concerns, and financial freedom for offshore banking and accepting deposits and most other financial services remains wide. In fact, additional vehicles/structures such as Limited Partnerships, Look-Through Companies and zero-tax-rate offshore Portfolio Investment Entities have been introduced in 2008, 2011 and 2012 respectively. Overall, New Zealand's appeal as an international financial services environment for honest and well-run business operators has never been stronger. However, it is now more critical to demonstrate a high standard of legal compliance and to have a greater physical and operational presence in New Zealand to enable FSP registration and to avoid deregistration.

Current Situation

Recent reforms include:

- More comprehensive and AML/CFT laws, regulations and requirements (effective 30th June 2013). Documented AML/CFT risk assessment and compliance programme are essential, in addition to facilities to perform Politically Exposed Persons and sanctions checks on applicants and customers. These documents must be properly prepared, and compliance with these requirements is supervised and audited, and generally banks are requiring these documents for review before a financial institution can open bank accounts. Even with these documents in order, most banks are routinely rejecting financial institution applicants – this is a worldwide problem, documented by the World Bank and is experienced by every financial services entrepreneur these days.
- New Zealand resident director requirements for New Zealand incorporated companies (Companies Amendment Act 2014, enacted 2 July 2014)
- New disqualification provisions for financial service providers where a controlling owner, director or senior manager has been convicted of specified crimes outside New Zealand in the last 5 years (Financial Service Providers Amendment Act 2014, enacted 29 Sept 2014)
- **Financial Markets Authority powers to refuse registration or deregister FSPs where registration would create false or misleading appearances about the extent of the financial service provider's New Zealand presence or would otherwise be damaging to the integrity or reputation of New Zealand's financial markets** (Financial Service Providers Amendment Act 2014, enacted 29 Sept 2014)

Many existing promoters of New Zealand FSP structures are not up to date with changes in New Zealand financial services laws and the structures they set up are frequently unable to obtain FSP registration or are at high risk of deregistration, and many of their clients are not compliant with New Zealand laws. Many operators using these structures are poorly advised and as a result inadvertently make false or misleading claims about their legal and regulatory status or products/services. False or misleading claims, even if inadvertent, are likely to be viewed by the Financial Markets Authority as *prima facie* evidence that your registration as a FSP is damaging to

the integrity or reputation of New Zealand's financial markets or regulatory arrangements. Furthermore, few international operators of NZ FSPs have an adequate and defensible place of business in New Zealand, making them vulnerable to deregistration. The FSPR now routinely asks for evidence of place of business, employees in New Zealand and their residential address proofs etc. before approving registration as an FSP.

Solutions for Serious Financial Services Operators

Document-based structure-packages are not appropriate in the current environment. To be successful now requires a solid operational presence and support and an experienced and qualified local guide and advocate supporting your New Zealand business profile.

This document presents solutions for serious parties who wish to conduct legitimate financial services and who have the sense to recognise the need to control the operations, connotations and profile of their institution as well as ticking the compliance boxes from the beginning.

The solutions described below are provided by a New Zealand-based, New Zealand-qualified finance professional with experience in New Zealand financial service provider structures for international financial services since 2005. His experience can provide both the high level strategy and the attention to detail required to design and implement instances of this structure that are cost-effective, established and operational in a timely manner, robust to official scrutiny, and with access to robust and integrated banking/clearing, accounting and other business systems that allow remote, web-based top-level management from outside New Zealand.

The solution is characterised by:

Consultation and strategy review, and acceptance check

This is an initial strategy review to understand the opportunity being targeted, market to be reached, identify constraints and concerns, and check for compatibility of the jurisdiction and the acceptability of the promoter and plan to the solution designer. Before doing a lot of work and spending a lot of money let's ensure we can get on and that your business proposal will be well served by this jurisdiction and this service provider.

Genuine Local Presence / Representation / Operations

The recipe involves creating a solid local presence with operations and representation for the business structure so that it does not look like a mere shell that has simply been produced by an incorporation mill with an 'extras package' of virtual office and nominee director tacked on. The genuine local presence includes:

- Resident director / compliance officer / privacy officer / complaints contact who is appropriately qualified and skilled to perform this role
- Genuine staffed operating presence in a presentable major commercial office building in a major city CBD where the some of the actual operations are conducted from and where any inspection or scrutiny of the business can be robustly and credibly responded to.
- Complaints handling procedures and system, including training records for relevant employees.
- New Zealand phone number(s) and white and yellow pages listings.

- Domain registration or transfer to NZ and SSL certificate for the domain in the legal name of the NZ FSP entity, and hosting in NZ
- AML/CFT risk assessment and compliance programme and out-sourced Customer Due Diligence (CDD) service based in New Zealand through [Worldclear](#)
- NZ-based financial institution multi-currency clearing account with [Worldclear](#)
- Internet banking platform hosted with a bank-grade hosting solution – [EBANQ](#), the mobile-ready internet-banking system integrated with [Worldclear](#) clearing services.
- Accounting system set up with [xero](#), the web-based multi-currency capable accounting platform based in New Zealand

This solution not only provides a genuine and robust New Zealand operating presence, but also provides an integrated and robust set of business and information systems to power your business and still allow you to run your New Zealand business remotely.



Example of a commercial office building in Hamilton.

Entity structure, FSP registration, tax set up etc.

The solution includes full company incorporation or LP formation, registered office, statutory records, dispute resolution scheme membership, complaints handling procedures and system, IRD number and tax registrations/set up, IRS FATCA registration, accounting system set up, compliance officer appointment documentation, privacy officer appointment documentation, New Zealand Police FIU web-registration etc. These activities will be done efficiently and in the right order and in the right way to ensure rapid completion and good presentation and compliance.

You also have ongoing support and contacts e.g. for legal advice on terms and conditions of financial products, specialised accounting or tax advice, as well as ongoing compliance support for the business-as-usual returns e.g. tax, annual returns, statutory company records etc.

Timeframe

Standard FSP registration is around 6 weeks due to FSPR processing times. Shelf FSP may be available to avoid this processing time for an additional fee. Set up of EBANQ internet banking system, SSL, AML/CFT programme etc. will take about 2 weeks after FSP registration is completed.

Pricing

Set Up Costs	
Component	Price in EUR
FSP structure set up (resident qualified director, company incorporation, join dispute resolution scheme, company constitution, notarisation and apostille, courier, IRD number and registrations, local domain and server hosting facility, real local operating presence, xero accounting set up)	23,500
EBANQ internet banking platform full licence	12,000
AML/CFT Programme documentation etc. and establish Clearing Banking facilities: Worldclear	4,000
NZ Secure hosting set up including SSL certificate (GeoTrust True BusinessID + EV)	Included in FSP set up
Total structure set up cost	39,500
Expedite FSP set up (shelf FSP, if available)	12,000

Payment terms: Advance payment for FSP set up. On FSP registration, payment is required for EBANQ, AML/CFT programme and clearing services, as well as the first 6 months of local presence service.

Running costs

The local presence running costs will be denominated in NZD for billing and administration purposes, however they are shown in EUR based on the current exchange rates (18/3/2015) for your budgeting purposes in considering this solution. Clearing and AML/CFT fees are in USD. EBANQ hosting are in EUR. (see next page)

Running Costs		
Component	Monthly price	Approximate EUR cost
Local employee / director / compliance officer / privacy officer (10 hours/month), real local operating presence, phone/internet, xero accounting system (multi-currency), FSP renewals, dispute resolution scheme membership renewals, tax returns, access to ongoing strategic and compliance advice	NZD3,100	2,135
AML/CFT compliance programme maintenance and access to outsourced CDD	USD200	189
Clearing Banking facilities Worldclear	USD200	189
state of the art cloud server solution in the Netherlands by EBANQ	EUR295	295
Total structure core compliance/running solution cost		2,808

Payment terms: after first 6 months, monthly debit from balances held with Worldclear, on the first of each month for the calendar month.