

# Employers as Financial Service Providers

- how will the new laws impact on employers involved in workplace savings?

David Ireland | Partner

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KENSINGTONSWAN.COM

AUCKLAND 18 Viaduct Harbour Avenue Tel: +64 9 379 4196

WELLINGTON 89 The Terrace Tel: +64 4 472 7877

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\*LAWYERS 

# Background

- The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (The FSPA)
- The Financial Advisers Act 2008 (The FAA)

# The Issues

- Are employers involved in workplace savings arrangements required to register as financial service providers?
- Will employers be regarded as financial advisers if they assist employees with their workplace savings arrangements?

# FSPA Registration

- People who are in the business of providing a financial service must be registered
  - registration generally requires membership of an approved dispute resolution scheme
- Financial services include:
  - participating in an offer of securities to the public (such as interests in a superannuation or KiwiSaver scheme) as a promoter
  - providing financial adviser services in relation to workplace savings

# FSPA Registration

- ‘Business’ includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit
- Registration is required if you are carrying on the business of being a financial service provider, whether or not it is your only business or your principal business
  - but is an employer promoter of a workplace scheme ‘carrying on the business’ of participating in an offer of membership in the scheme as a promoter?

# Employers as financial advisers

- ‘Financial Advice’ = any recommendation, opinion or guidance given in relation to acquiring or disposing of a financial product
- An employer who gives financial advice in the course of business is regarded as a financial adviser under the FAA, unless an exception applies

# What is not financial advice?

- Anything contained in prescribed Securities Act disclosure documentation or advertisements signed off by the issuer
  - exclusion does not apply to summaries or explanations of such material
- Merely providing information, unless accompanied by a recommendation, opinion, or guidance
  - ‘guidance’ is the problem!

# Statutory Exemptions

- Wide relief for provision of factual descriptions or transmission of information regarding KiwiSaver or KiwiSaver Schemes
- Assistance to employees with implementing decisions to join or withdraw from a workplace savings scheme is not caught, unless a recommendation is made or opinion expressed as to the suitability of the scheme

# Financial Advisers Code Committee

- Consultation phase for development of a code of professional conduct for financial advisers has commenced
- Draft Code to be released before Christmas for further consultation
- FAA regime fully operational by the end of 2010

# Association Engagement

- We will:
  - contribute to the Code development, to the extent the Code may impact on employers and others involved in workplace savings
  - continue to engage with MED to improve outcomes and clarity of application of FSPA and FAA for Association members
- Feedback welcomed!

# The employer as a workplace savings financial service provider: challenging times ahead!

David Ireland  
Partner  
Ph: 498 0840  
[david.ireland@kensingtonswan.com](mailto:david.ireland@kensingtonswan.com)