

Financial Professional Services Trading Advice Transparency Bill

Member's Bill

Explanatory note

General policy statement

The position of this Bill is that professional advisers that recommend receivership, liquidation, or administration of a business, or any other status requiring a third party to manage the ongoing trading or management of the business, or disposal of its assets (such as being appointed a receiver), may not, having provided the initial advice, undertake any of those subsequent roles in respect of the entity in question.

An inherent conflict of interest exists in a case whereby provision of the initial advice for which the professional services firm is appointed could result in subsequent fee-earning business in respect of the entity in question, depending on the particular advice given. This bill removes that conflict.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Companies Act 1993

Clause 3 provides that *Part 1* amends the Companies Act 1993.

Clause 4 amends section 239F of the Companies Act 1993 to prevent a person from being appointed as administrator of a company if the person recommended the administration or is associated with the person who recommended the administration.

Clause 5 amends section 280 of the Companies Act 1993 to prevent a person from being appointed or acting as liquidator of a company if the person recommended the liquidation or is associated with the person who recommended the liquidation.

Part 2

Amendments to Receiverships Act 1993

Clause 6 provides that *Part 2* amends the Receiverships Act 1993.

Clause 7 amends section 5 of the Receiverships Act 1993 to prevent a person from being appointed or acting as a receiver if the person recommended the receivership or is associated with the person who recommended the receivership.

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Financial Professional Services Trading Advice Transparency Act **2021**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Companies Act 1993

3 Principal Act

This **Part** amends the Companies Act 1993.

4 Section 239F amended (Who may be appointed administrator) 5

- (1) In section 239F(1), after “subsection (2)”, insert “or **subsection (3)**”.
- (2) After section 239F(2), insert:
- (3) A person is disqualified from appointment as an administrator if that person—
- (a) is a professional adviser who recommended the administration of the company; or 10
 - (b) is employed or otherwise engaged by—
 - (i) the person described in **paragraph (a)**; or
 - (ii) the business for which the person described in **paragraph (a)** was employed or otherwise engaged when recommending the administration of the company. 15
- (4) In this section, **professional adviser** means a person whose employment or business activities includes providing advice on the financial management of companies.

5 Section 280 amended (Qualifications of liquidators) 20

- (1) After section 280(2), insert: 20
- (2A) A person must not be appointed or act as a liquidator if the person—
- (a) is a professional adviser who recommended the liquidation of the company; or
 - (b) is employed or otherwise engaged by—
 - (i) the person described in **paragraph (a)**; or 25
 - (ii) the business for which the person described in **paragraph (a)** was employed or otherwise engaged when recommending the liquidation of the company.
- (2) In section 280(3), replace “subsection (1) or subsection (2)” with “subsection (1), (2), or **(2A)**”. 30
- (3) After section 280(4), insert:
- (5) In this section, **professional adviser** means a person whose employment or business activities includes providing advice on the financial management of companies.

Part 2 Amendments to Receiverships Act 1993

6 Principal Act

This **Part** amends the Receiverships Act 1993.

7 Section 5 amended (Qualifications of receivers)

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(1) After section 5(2), insert:

(2A) A person must not be appointed or act as a receiver if the person—

(a) is a professional adviser who recommended the receivership of the grantor; or

(b) is employed or otherwise engaged by—

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(i) the person described in **paragraph (a)**; or

(ii) the business for which the person described in **paragraph (a)** was employed or otherwise engaged when recommending the receivership of the grantor.

(2) In section 5(3), replace “subsection (1) or subsection (2)” with “subsection (1), (2), or **(2A)**”.

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(3) After section 5(3), insert:

(4) In this section, **professional adviser** means a person whose employment or business activities includes providing advice on the financial management of incorporated or unincorporated bodies.

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