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Deposit Takers Act 2023

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Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Reserve Bank of New Zealand.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Deposit Takers Act 2023.

2 Commencement

- (1) Subpart 2 of Part 3, sections 238 to 244, subpart 7 of Part 6, and subpart 5 of Part 8 come into force on the day after the date of Royal assent.
- (2) The rest of this Act comes into force on a date or dates set by Order in Council.
- (3) Any part of the Act that has not come into force by the sixth anniversary of Royal assent comes into force then.
- (4) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Part 1

Preliminary provisions

3 Purposes

- (1) The main purpose of this Act is to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system.
- (2) To that end, this Act has the following additional purposes:
 - (a) to promote the safety and soundness of each deposit taker:
 - (b) to promote public confidence in the financial system:
 - (c) to the extent not inconsistent with subsection (1) and paragraphs (a), (b), and (d), to support New Zealanders having reasonable access to financial products and services provided by the deposit-taking sector:
 - (d) to avoid or mitigate the adverse effects of the following risks:
 - (i) risks to the stability of the financial system:
 - (ii) risks from the financial system that may damage the broader economy.

4 Principles to be taken into account under this Act

In achieving the purposes of this Act, the Bank must take into account the following principles that are relevant to the performance or exercise of the functions, powers, and duties conferred or imposed on the Bank:

- (a) the desirability of—
 - (i) taking a proportionate approach to regulation and supervision; and
 - (ii) consistency in the treatment of similar institutions; and
 - (iii) the deposit-taking sector comprising a diversity of institutions to provide access to financial products and services to a diverse range of New Zealanders:
- (b) the need to maintain competition within the deposit-taking sector:
- (c) the need to avoid unnecessary compliance costs:
- (d) the desirability of maintaining awareness of, and responding to,—
 - (i) the practices of overseas supervisors that perform functions in relation to any licensed deposit taker or any holding company of any licensed deposit taker; and
 - (ii) guidance or standards of international organisations:
- (e) the desirability of ensuring that the risks referred to in section 3(2)(d) are managed (including long-term risks to the stability of the financial system):
- (f) the desirability of sound governance of deposit takers:

- (g) the desirability of deposit takers effectively managing their capital, liquidity, and risk:
- (h) the desirability of depositors having access to timely, accurate, and understandable information to assist them to make decisions relating to debt securities issued by deposit takers.

5 Overview

- (1) This Act provides for the licensing, regulation, and prudential supervision of banks and other persons in the business of borrowing and lending money (**deposit takers**).

- (2) In this Act,—

Preliminary

- (a) this Part provides for—
 - (i) the purposes of this Act; and
 - (ii) the principles that the Reserve Bank of New Zealand (the **Bank**) must take into account when acting under this Act:

Licensing of banks and other deposit takers

- (b) Part 2—
 - (i) requires deposit takers to hold a licence:
 - (ii) provides for when the Bank must issue a licence:
 - (iii) provides for licence conditions:
 - (iv) requires directors and senior managers of deposit takers to be fit and proper persons:
 - (v) requires the Bank's approval for certain important changes (for example, a change in significant influence over a bank or a significant transaction):
 - (vi) provides for when the Bank may cancel a licence:
 - (vii) provides for appeals against licensing decisions:

Regulation of deposit takers

- (c) Part 3—
 - (i) requires a deposit taker to have a current rating of its creditworthiness:
 - (ii) requires a deposit taker to comply with prudential standards. Those standards may relate to, for example, governance, capital, liquidity, exposures to related parties, risk management, disclosure of information, contingency and recovery plans, and internal controls and assurance:
 - (iii) requires directors of a deposit taker (or a New Zealand chief executive officer, in the case of an overseas deposit taker) to exer-

cise due diligence to ensure that the deposit taker complies with its prudential obligations:

Supervision of deposit takers

- (d) Part 4—
- (i) requires the Bank to prudentially supervise deposit takers:
 - (ii) provides for information-gathering, on-site inspection, and investigation powers:
 - (iii) requires a deposit taker to monitor its compliance with the prudential obligations and to report a failure to comply to the Bank:
 - (iv) allows the Bank to require a deposit taker to take action to address a failure to comply:
 - (v) allows the Bank to require a deposit taker to disclose warnings:

Enforcement

- (e) Part 5—
- (i) allows the Bank to accept undertakings:
 - (ii) provides for the High Court to impose a pecuniary penalty for a failure to comply with applicable standards, conditions of a licence, or the due diligence duty for directors and New Zealand chief executive officers:
 - (iii) provides for infringement offences:
 - (iv) creates an offence of giving false or misleading information under this Act:
 - (v) provides for the District Court to ban persons from participating in a deposit-taking business:
 - (vi) provides for when a state of mind or conduct is attributed to a body corporate or other principal:

Depositor compensation scheme

- (f) Part 6 establishes a depositor compensation scheme to—
- (i) provide certain compensation to eligible depositors when the Bank has issued a specified event notice in relation to a licensed deposit taker. The Bank may issue a notice in certain circumstances after, for example, the deposit taker has been put into liquidation or receivership or has entered resolution:
 - (ii) support a resolution measure undertaken in relation to a licensed deposit taker under subpart 5 of that Part:

Crisis management and resolution

- (g) Part 7—

- (i) gives the Bank the power to issue directions to a licensed deposit taker or an associated person (for example, a direction to avoid or mitigate any adverse effects arising from a deposit taker being in financial distress or other difficulties):
 - (ii) gives the Bank the power to remove, replace, or appoint a director of a licensed deposit taker (for example, when it is necessary or desirable to do so in circumstances where a deposit taker is insolvent or is likely to become insolvent or has materially breached a prudential obligation):
 - (iii) provides for the resolution of a licensed deposit taker or an associated person that is in financial distress or other difficulties:
 - (iv) provides for compensation to be paid to creditors or shareholders that are worse off as a result of a resolution:
 - (v) regulates covered bonds:
- Miscellaneous provisions*
- (h) Part 8—
 - (i) imposes restrictions on the use of the words “bank”, “banker”, and “banking”:
 - (ii) provides for co-operation with Australian financial authorities:
 - (iii) provides for the confidentiality of information given to the Bank:
 - (iv) gives the Bank the power to specify how certain things are done under this Act (for example, how to apply for a licence):
 - (v) provides for regulations to support the Act.
- (3) This section is only a guide to the general scheme and effect of this Act.

6 Interpretation

In this Act, unless the context otherwise requires,—

agreement includes any contract, arrangement, or understanding

applicable standard, in relation to a person, means a standard issued under subpart 2 of Part 3 that applies to the person

approved rating agency means a rating agency approved by the Bank under subpart 1 of Part 3

associated person or **associate** has the meaning set out in section 7

Australian financial authority means an Australian public authority prescribed by the regulations

bail-in instrument has the meaning set out in section 80

Bank means the Reserve Bank of New Zealand continued under the Reserve Bank of New Zealand Act 2021

Bank's Internet site means an Internet site maintained by, or on behalf of, the Bank

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

business, operation, or management has the meaning set out in section 99(5)

communication includes an advertisement

constitution means,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and
- (b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity

co-operative company means a company registered as a co-operative company under the Co-operative Companies Act 1996

Council of Financial Regulators means the Council of Financial Regulators continued under subpart 4 of Part 6 of the Reserve Bank of New Zealand Act 2021

court means, in relation to any matter, the court before which the matter is to be determined (*see* section 187, which confers exclusive jurisdiction on the High Court in proceedings other than proceedings for offences, banning orders, and certain other matters)

credit has the same meaning as in section 6 of the Credit Contracts and Consumer Finance Act 2003

credit union has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

current credit rating means a rating of creditworthiness that, in relation to a date on which a deposit taker is required to have a rating, was given not earlier than 15 months before that date

debt security has the same meaning as in section 8 of the FMCA

deposit taker has the meaning set out in clause 2 of Schedule 2

depositor compensation scheme means the depositor compensation scheme established by Part 6

designated FMI has the same meaning as in section 5 of the Financial Market Infrastructures Act 2021

director means,—

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- (b) in relation to a partnership (other than a limited partnership), any partner:
- (c) in relation to a limited partnership, any general partner:

- (d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company

document has the same meaning as in section 4(1) of the Evidence Act 2006

eligible depositor has the meaning set out in section 191

enters resolution has the meaning set out in section 277

financial markets has the same meaning as in section 6(1) of the FMCA

financial product has the same meaning as in section 7 of the FMCA

financial service has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

financial service provider means a person who carries on a business of providing a financial service, whether or not—

- (a) the business is the provider's only business or the provider's principal business; or
- (b) the person is required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

financial system—

- (a) means the financial system in New Zealand; and
- (b) includes the financial markets

fit and proper certificate means a certificate that complies with the requirements of an applicable standard referred to in section 81(1)(c)

FMA means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011

FMCA means the Financial Markets Conduct Act 2013

friendly society has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

governing body means,—

- (a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate:
- (b) in relation to a partnership or other unincorporated body of persons, either—
- (i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership or other unincorporated body of persons; or
- (ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated body of persons

Governor means a person who occupies the position of Governor of the Bank (whether the person is appointed under section 82 or 96 of the Reserve Bank of New Zealand Act 2021)

holding entity has the meaning set out in section 7

home jurisdiction means,—

- (a) in the case of an overseas person that is a body corporate, the country in which that body is incorporated;
- (b) in the case of an overseas person that is an unincorporated body, the country in which that body has its head office or principal place of business

in resolution has the meaning set out in section 277

information includes any data, forecast, or document

infringement fee, in relation to an infringement offence, means the infringement fee for the offence specified in the provision that identifies the infringement offence

infringement offence means an offence identified in this Act as being an infringement offence

insolvent, in relation to a deposit taker or any other entity (A), means that—

- (a) A is unable to pay A's debts as they become due in the normal course of business; or
- (b) the value of A's assets is less than the value of A's liabilities, including contingent liabilities (and for that purpose section 4(4) of the Companies Act 1993 applies in respect of A as if it were a company even if it is not)

investigator means a person appointed as an investigator under subpart 5 of Part 4

law enforcement or regulatory agency has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021

licence means a licence issued under Part 2

licensed deposit taker means a person that holds a licence

licensed deposit taker group, in relation to a licensed deposit taker, means the licensed deposit taker and all of its holding entities and subsidiaries (if any)

liquidation under New Zealand law, in relation to an overseas body corporate, includes a liquidation as referred to in section 342 of the Companies Act 1993

local authority has the meaning set out in section 5(1) of the Local Government Act 2002

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

New Zealand chief executive officer, in relation to an overseas deposit taker, means—

- (a) the most senior officer of the deposit taker who is ordinarily resident in New Zealand; or
- (b) another person who may be nominated by the deposit taker and agreed to in writing by the Bank

New Zealand chief financial officer, in relation to an overseas deposit taker, means—

- (a) the most senior officer of the deposit taker who is ordinarily resident in New Zealand (other than the New Zealand chief executive officer) and who is responsible for the accounting and financial reporting obligations of the deposit taker; or
- (b) another person who may be nominated by the deposit taker and is agreed to in writing by the Bank

non-deposit-taking lender means a person that carries on the business of lending money but is not a deposit taker

overseas company means a body corporate that is incorporated outside New Zealand

overseas deposit taker means a deposit taker that is an overseas person

overseas licensed deposit taker means a licensed deposit taker that is an overseas person

overseas person means—

- (a) a body corporate incorporated outside New Zealand; or
- (b) an unincorporated body that has its head office or principal place of business outside New Zealand

overseas supervisor means any authority or body in any country other than New Zealand that performs functions in relation to deposit takers that correspond with, or are similar to, those conferred on the Bank under this Act

personal information has the same meaning as in section 7(1) of the Privacy Act 2020

protected deposit has the meaning set out in section 192

prudential legislation has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021

prudential obligation means an obligation imposed by or under any of the following:

- (a) this Act or the regulations;
- (b) the standards;
- (c) a condition of a licence issued under Part 2:

- (d) a direction given under this Act:
- (e) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and regulations made under that Act (but *see* sections 93(3) and 94(3))

regulations means regulations made under this Act

relative, in relation to any person, means—

- (a) the person’s spouse, civil union partner, or de facto partner; or
- (b) any parent, step-parent, brother, sister, child, or stepchild of the person; or
- (c) any parent, step-parent, brother, sister, child, or stepchild of the person’s spouse, civil union partner, or de facto partner

resolution manager means—

- (a) a person appointed under section 357; or
- (b) the Bank if the Bank has appointed itself as a resolution manager or no other person holds office as a resolution manager

restricted word—

- (a) means any of the words “bank”, “banker”, and “banking”; and
- (b) includes—
 - (i) any of those words as part of any other word:
 - (ii) a translation of those words into another language (whether or not the translation of those words is part of any other word)

security interest means an interest in property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—

- (a) the form of the transaction; and
- (b) the identity of the person who has title to the collateral

senior manager, in relation to a person (A), means a person who occupies any of the following positions in respect of A (by whatever name called):

- (a) if A is an overseas person,—
 - (i) New Zealand chief executive officer:
 - (ii) New Zealand chief financial officer:
- (b) in any other case,—
 - (i) chief executive:
 - (ii) chief financial officer:
 - (iii) a manager who reports directly to the chief executive

significant transaction has the meaning set out in section 41

SPV means a special purpose vehicle

standard means a standard issued under subpart 2 of Part 3

statement of funding approach means a statement published under subpart 7 of Part 6

subsidiary means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993

temporary high balance limit has the meaning set out in section 203

voting product means a financial product that confers a voting right

voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists:
- (b) on a proposal that affects rights attached to the financial product that confers the voting right:
- (c) during the liquidation of the body corporate:
- (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

7 Meaning of associated person and holding entity

- (1) For the purposes of this Act, unless the context otherwise requires, a person (A) is **associated** with another person (B) if—
 - (a) B is A's holding entity or subsidiary; or
 - (b) more than half of the voting products of A, other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by B and persons that are associated with B (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) more than half of the voting products of each of A and B, other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) the businesses of A and B have been carried on in such a manner that the separate business of each person, or a substantial part of it, is not readily identifiable; or
 - (e) there is another person with which both persons are associated.
- (2) **Associated person** and **associate** have a corresponding meaning.
- (3) For the purposes of this Act, a person is another person's **holding entity** if, and only if, that other person is its subsidiary.

8 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

9 Act binds the Crown

This Act binds the Crown.

Part 2
Licensing of deposit takers

Subpart 1—Key provisions

10 Deposit taker must be licensed

Every person who carries on business as a deposit taker must hold a licence.

11 Offence for deposit taker to carry on business without licence

- (1) A person (A) commits an offence if A—
 - (a) carries on business as a deposit taker without holding a licence; and
 - (b) knows that, or is reckless as to whether, it must hold a licence.
- (2) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both);
 - (b) in any other case, to a fine not exceeding \$5,000,000.

12 Liquidation of deposit taker that carries on business without licence

The court may, on the application of the Bank, appoint a liquidator for a body corporate that may be put into liquidation under or in accordance with the Companies Act 1993 if it is satisfied that the body corporate is carrying on business as a deposit taker in contravention of section 10.

13 No holding out as licensed

A person that is not licensed as a deposit taker must not, directly or indirectly, hold out that the person is a licensed deposit taker.

14 Offence for holding out

- (1) A person (A) commits an offence if A—
 - (a) contravenes section 13; and
 - (b) knows that, or is reckless as to whether, what they are holding out is not the case.
- (2) A person that commits an offence against this section is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both);
- (b) in any other case, to a fine not exceeding \$5,000,000.

Subpart 2—Issue of licences

15 Bank may issue licence

The Bank may issue a licence in accordance with this subpart.

16 Application for licence

- (1) A body corporate may apply for a licence in the manner that is specified by the Bank.
- (2) *See* subpart 4 of Part 8 (which provides for the Bank’s power to specify the manner in which an application is made).

17 When licence must be issued

- (1) The Bank must, after receiving an application, issue a licence to which the application relates if the Bank is satisfied that—
 - (a) the applicant has the ability to comply with the prudential obligations (including prudential obligations that the Bank proposes to impose if it issues the licence); and
 - (b) the applicant’s incorporation and ownership structure and its governance structure are appropriate, having regard to the size and nature of the applicant’s business or proposed business; and
 - (c) the applicant’s ownership (including the financial strength and source of funding of each person to which subsection (2) applies) is appropriate, having regard to the size and nature of the applicant’s business or proposed business; and
 - (d) the applicant’s directors, senior managers, and proposed directors and senior managers are fit and proper persons to hold their respective positions; and
 - (e) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide the service of being a licensed deposit taker; and
 - (f) in the case of an applicant that is an overseas person, the criteria set out in section 18 are satisfied; and
 - (g) the eligibility criteria (if any) that are prescribed by the regulations are satisfied.
- (2) For the purposes of subsection (1)(c), a person (**A**) is a person to which this subsection applies if—

- (a) A has the power (whether directly or indirectly) to exercise, or control the exercise of, 25% or more of the voting rights in the applicant; or
 - (b) A has, together with 1 or more connected persons, the power (whether directly or indirectly) to exercise, or control the exercise of, 25% or more of the voting rights in the applicant.
- (3) In subsection (2), **connected person**, in relation to A, means—
- (a) a person who is acting or will act jointly or in concert with A in respect of exercising, or controlling the exercise of, a power referred to in subsection (2)(a) or (b); or
 - (b) a person who acts, or is accustomed to acting, in accordance with the wishes of A.

18 Additional criteria for overseas applicants

- (1) For the purposes of section 17(1)(f), the Bank must be satisfied that the following are appropriate:
- (a) the law and regulatory requirements of the applicant's home jurisdiction that apply to the applicant and relate to the relevant matters;
 - (b) the nature and extent of prudential supervision that applies to the applicant and to deposit takers generally in the applicant's home jurisdiction.
- (2) The Bank must,—
- (a) in the case of subsection (1)(a), have regard to whether the law and regulatory requirements of the applicant's home jurisdiction are, in terms of achieving the purposes of this Act, at least as satisfactory as the law and regulatory requirements of New Zealand that relate to the relevant matters and apply to deposit takers incorporated in New Zealand; and
 - (b) in the case of subsection (1)(b), have regard to whether the prudential supervision is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to deposit takers incorporated in New Zealand.
- (3) The **relevant matters** are—
- (a) the licensing, registration, or authorisation of deposit takers; and
 - (b) the duties and powers of directors; and
 - (c) the capital standards that apply to deposit takers; and
 - (d) the disclosure of financial and other information to the public; and
 - (e) assessments of the fitness and propriety of directors and senior managers; and
 - (f) matters concerning deposit takers that are insolvent or otherwise in serious financial difficulties (including the recognition and priorities of claims of creditors or classes of creditors in the event of an insolvency).

- (4) In this section, **deposit takers**, in relation to an applicant's home jurisdiction, includes banks or other entities that are licensed, registered, or otherwise authorised to accept deposits under the law of that jurisdiction.

19 Overseas requirements may be treated as appropriate

The following must be treated as being appropriate if the applicant's home jurisdiction is a jurisdiction prescribed in the regulations:

- (a) the law and regulatory requirements referred to in section 18(1)(a):
- (b) the nature and extent of the prudential supervision referred to in section 18(1)(b).

20 Consultation requirements

The Bank must, before making a decision under section 17, consult—

- (a) the FMA; and
- (b) the applicant about the conditions and standards that the Bank proposes to impose in relation to the applicant (if the Bank issues a licence).

21 Notice of decision

- (1) The Bank must give notice of its decision under section 17 to the applicant.
- (2) If the Bank refuses to issue a licence, the notice must include a statement of the Bank's reasons for doing so.

22 Bank must keep register of licensed deposit takers

- (1) The Bank must keep a public register of licensed deposit takers.
- (2) The Bank must take all reasonable steps to ensure that the information contained in the public register is available through the Bank's Internet site.

23 Form and content of register

- (1) The Bank must determine the form of the register of licensed deposit takers and may amend the form as it considers necessary.
- (2) The register must include the following in relation to each licensed deposit taker:
 - (a) the name of the deposit taker:
 - (b) the date on which its licence was issued:
 - (c) the deposit taker's current credit rating under subpart 1 of Part 3 and the name of the rating agency that gave that rating:
 - (d) a summary of the matters that are specified by a condition of the deposit taker's licence as referred to in section 92:
 - (e) all other information prescribed by the regulations.
- (3) The register may also include a summary of—

- (a) 1 or more conditions or standards that apply to the deposit taker; and
- (b) any other matters that the Bank thinks fit.

Subpart 3—Conditions of licences

24 Bank may impose conditions on licence

- (1) The Bank may issue a licence to a person (A) subject to any of the following conditions:

- (a) a condition that identifies the standards that A must comply with;
- (b) a condition that identifies requirements in standards that apply to A:

Example

A standard provides that a particular capital requirement applies to a deposit taker if the conditions of its licence state that the requirement applies.

- (c) conditions that provide for anything that the standards say may or must be provided for by conditions:

Example

A standard provides for a specific minimum capital ratio (within a range set out in the standard) that a deposit taker must maintain to be set in a licence condition.

- (d) conditions that impose limits or restrictions on either or both of the following:

- (i) the size or nature of the whole or any part of A's business or proposed business;
- (ii) any activities that may be carried out by A:

- (e) in the case of a person that has not yet commenced carrying on the business of borrowing and lending money in New Zealand, either or both of the following:

- (i) a condition that specifies the time period within which A must commence carrying on that business in New Zealand;
- (ii) a condition that specifies the extent of that business in New Zealand that A must have within a specified period:

- (f) a condition that requires A or A's directors (or both) to certify that 1 or more of the following have been complied with (being certification that is given in the manner specified by the Bank):

- (i) any prudential obligations;
- (ii) any requirements of any other legislation that are imposed on A as a licensed deposit taker (for example, financial reporting obligations).

- (2) See subpart 2 of Part 5, which provides for a court to impose a pecuniary penalty for a contravention of a condition.

25 Bank may modify conditions of licence

- (1) The Bank may, at any time after a licence is issued, by notice to the licensed deposit taker,—
- (a) impose conditions of the licence (whether or not the licence is already subject to conditions); or
 - (b) vary, remove, add to, or substitute any conditions of the licence.
- (2) The Bank must, before exercising the power,—
- (a) give the deposit taker not less than 7 days' notice of the Bank's intention to do so; and
 - (b) give the deposit taker a reasonable opportunity to make submissions to the Bank; and
 - (c) have regard to those submissions.
- (3) The notice given to the deposit taker must contain, or be accompanied by, a statement of the Bank's reasons for proposing to exercise the power.

Subpart 4—Fit and proper requirements

26 Licensed deposit taker must obtain Bank's approval before new director or senior manager is appointed

- (1) A licensed deposit taker must obtain the approval of the Bank before a new director or senior manager is appointed.
- (2) A request for the Bank to give its approval under this subpart must—
- (a) contain or be accompanied by a fit and proper certificate for the new director or senior manager; and
 - (b) otherwise be made in the manner that is specified by the Bank.
- (3) This section does not apply in relation to—
- (a) a person who is appointed as a senior manager on an interim basis if the terms and conditions specified under section 81(1)(f) are complied with; or
 - (b) an overseas licensed deposit taker (*see instead* section 30).

27 Offence to appoint new director or senior manager without approval

A licensed deposit taker that contravenes section 26(1) commits an offence and is liable on conviction to a fine not exceeding \$500,000.

28 Bank's decision on approval

- (1) The Bank may, after considering a request for approval under section 26,—

- (a) give its approval unconditionally or subject to any conditions that the Bank thinks fit; or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed deposit taker within 20 working days after receiving all of the information that the Bank reasonably requires to assist it in determining whether to give its approval.
- (3) If the Bank refuses to give its approval or its approval is subject to conditions, the notice under subsection (2) must contain a statement of its reasons.

29 Bank may suspend director or senior manager if approval not obtained

- (1) If a licensed deposit taker fails to comply with section 26 in relation to a director or senior manager (**B**), the Bank may make an order prohibiting or restricting B, without the leave of the Bank, from either or both of the following:
 - (a) acting as a director of the deposit taker:
 - (b) being concerned in, or taking part in the management of, the deposit taker.
- (2) The order ceases to be in force if the Bank approves the appointment.
- (3) If B knowingly fails to comply with the order, B commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).
- (4) *See also* subpart 5 of Part 5, which allows the District Court to make a banning order if B fails to comply with the Bank's order.

30 Overseas licensed deposit taker must notify Bank if new director or senior manager is appointed

- (1) An overseas licensed deposit taker must, no later than 20 working days after the appointment of a new director or senior manager, provide to the Bank a fit and proper certificate for the new director or senior manager.
- (2) An overseas licensed deposit taker that contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

31 Bank may require further fit and proper certificate

- (1) If the Bank has given a notice to a licensed deposit taker that requires it to give to the Bank a fit and proper certificate for a specified director or senior manager, the deposit taker must, in the manner specified by the Bank, comply with the requirement.
- (2) This section applies whether or not a certificate in respect of the director or officer has previously been provided under this subpart.

- (3) A licensed deposit taker that contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

32 Deposit taker’s duty on becoming aware of fit and proper concerns

- (1) This section applies if a licensed deposit taker becomes aware of information on the basis of which it could reasonably form the opinion that a director or senior manager of the deposit taker is not, or is not likely to be, a fit and proper person to hold the relevant position.
- (2) The deposit taker must, as soon as practicable, disclose to the Bank all information relevant to that matter that is in the possession or under the control of the deposit taker.
- (3) In forming an opinion under subsection (1), the licensed deposit taker must have regard to the fit and proper matters specified in an applicable standard.
- (4) In this section, **director or senior manager** of the deposit taker includes a proposed new director or senior manager in respect of whom the deposit taker has requested approval under section 26.

33 Offence to fail to disclose fit and proper concerns

A licensed deposit taker that, without reasonable excuse, contravenes section 32 commits an offence and is liable on conviction to a fine not exceeding \$500,000.

34 Power to remove directors and senior managers

- (1) This section applies if the Bank, after having regard to the fit and proper matters specified in an applicable standard, has reasonable grounds to believe that a director or senior manager of a licensed deposit taker is not a fit and proper person to hold the relevant position.
- (2) The Bank may remove the director or senior manager from the relevant position from a date specified by the Bank.

35 Bank may direct that person may not be reappointed

If the Bank acts under section 34, the Bank may give a direction that the director or senior manager may not be reappointed as a director or senior manager of the licensed deposit taker—

- (a) at any time; or
- (b) for a period specified by the Bank; or
- (c) until 1 or more things specified by the Bank occur (for example, the director or senior manager receives a specified qualification).

36 Offence to contravene direction

- (1) A licensed deposit taker that reappoints a person as a director or senior manager in contravention of a direction under section 35 commits an offence and is liable on conviction to a fine not exceeding \$500,000.
- (2) A person who has been removed as a director or manager under section 34 commits an offence if they accept reappointment to a position in contravention of a direction under section 35.
- (3) A person who commits an offence against subsection (2) is liable on conviction to a fine not exceeding \$50,000.

37 Further provisions about power to remove

- (1) Sections 34 and 35 apply whether or not the director or senior manager is a fit and proper person to hold their position under the licensed deposit taker's fit and proper policy.
- (2) Sections 34 and 35 do not apply to a director of an overseas deposit taker.
- (3) Sections 34 and 35 have effect despite any agreement, legislation, or rule of law, or the terms of the constitution of a licensed deposit taker.

38 How power to remove is exercised

- (1) The Bank must, before exercising a power under section 34,—
 - (a) give the licensed deposit taker and the director or senior manager not less than 7 days' notice of the Bank's intention to do so; and
 - (b) give the licensed deposit taker and the director or senior manager a reasonable opportunity to make submissions to the Bank; and
 - (c) have regard to those submissions.
- (2) The notice given to the deposit taker and the director or senior manager must contain, or be accompanied by, a statement of the Bank's reasons for proposing to exercise the power.
- (3) The Bank must exercise the powers conferred by sections 34 and 35 by giving notice to—
 - (a) the licensed deposit taker; and
 - (b) the director or the senior manager; and
 - (c) in the case of a director, the Registrar of Companies.
- (4) A notice given under subsection (3)(c) is sufficient compliance with section 159 of the Companies Act 1993.

Subpart 5—Bank’s approval required for certain changes

Obtaining significant influence

39 Person who obtains significant influence over licensed deposit taker must obtain Bank’s approval

- (1) A person (A) must obtain the approval of the Bank before giving effect to a transaction if the transaction would result in A obtaining significant influence over a licensed deposit taker.
- (2) In this section and section 40, a person (A) **obtains significant influence** over a licensed deposit taker if—
 - (a) A obtains the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 25% or more of the voting rights in the deposit taker; or
 - (ii) appoint 50% or more of the directors of the deposit taker; or
 - (b) A obtains, together with 1 or more specified persons, the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 25% or more of the voting rights in the deposit taker; or
 - (ii) appoint 50% or more of the directors of the deposit taker.
- (3) In this section and section 40, **specified person**, in relation to A, means—
 - (a) a person who is acting or will act jointly or in concert with A in respect of exercising, or controlling the exercise of, a power referred to in subsection (2)(b)(i) or (ii); or
 - (b) a person who acts, or is accustomed to acting, in accordance with the wishes of A.
- (4) Subsection (1) does not apply in relation to an overseas licensed deposit taker (*see instead* section 40).

40 Overseas licensed deposit taker must notify Bank if person obtains significant influence

- (1) If a person (A) gives effect to a transaction that results in A obtaining significant influence over an overseas licensed deposit taker (B), B must give the Bank written notice of that matter within 20 working days after B becomes aware that A has obtained that influence.
- (2) The notice must specify the following information (to the extent that B is aware of the information):
 - (a) A’s name and the names of any specified persons; and
 - (b) the nature and extent of the power referred to in section 39 that A (or A together with 1 or more specified persons) may exercise or control; and

- (c) the date on which A obtained the significant influence.
- (3) An overseas licensed deposit taker that contravenes subsection (1) commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Significant transactions

41 Licensed deposit taker must obtain Bank’s approval before entering into significant transaction

- (1) A licensed deposit taker must obtain the approval of the Bank before entering into a significant transaction.
- (2) In this Act, **significant transaction** means any of the following:
 - (a) a transaction that involves,—
 - (i) in the case of an overseas deposit taker, the transfer of all or a material part of the deposit taker’s New Zealand business to another person; or
 - (ii) in the case of any other deposit taker, the transfer of all or a material part of the deposit taker’s business to another person:
 - (b) any other transaction of a kind that is specified in an applicable standard as a significant transaction in respect of which approval is required under this subpart.
- (3) Whether a part of a business is **material** must be determined in accordance with an applicable standard.

Amalgamation

42 Licensed deposit taker must obtain Bank’s approval before amalgamation

- (1) A licensed deposit taker must obtain the approval of the Bank before the deposit taker amalgamates with another person (whether it occurs under Part 13 of the Companies Act 1993 or any other law of similar effect that results in 2 or more entities amalgamating and continuing as 1 entity).
- (2) In this subpart, **amalgamated entity** means the single entity that is proposed to result from and continue after a proposed amalgamation.
- (3) Subsection (1) does not apply in relation to an overseas licensed deposit taker (*see instead* section 43).

43 Overseas licensed deposit taker must notify Bank if it amalgamates with another person

- (1) If an overseas licensed deposit taker (A) amalgamates with another person (under a law that results in 2 or more entities amalgamating and continuing as 1

entity), A must give the Bank written notice of the amalgamation within 20 working days after it takes effect.

- (2) The notice must specify—
 - (a) the names of each amalgamating entity and the amalgamated entity; and
 - (b) the date of the amalgamation.
- (3) An overseas licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

Consequences of failing to get approval

44 Offence to fail to get approval

- (1) A person (A) commits an offence if A—
 - (a) contravenes section 39, 41, or 42; and
 - (b) knows that, or is reckless as to whether, it must obtain the Bank’s approval under that section.
- (2) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in any other case, to a fine not exceeding \$2,500,000.

45 Failure to get approval does not invalidate proposed change

Nothing in this subpart invalidates any change in significant influence over a licensed deposit taker, significant transaction, or amalgamation made without the approval of the Bank.

Process for approval

46 Meaning of proposed change

In this subpart, **proposed change** means any of the following in respect of which approval is required under this subpart:

- (a) the obtaining of significant influence over a licensed deposit taker;
- (b) the entering into of a significant transaction;
- (c) the amalgamation of a licensed deposit taker with 1 or more other persons.

47 Request for approval

- (1) A request for the Bank to give its approval under this subpart must be made in the manner that the Bank specifies.

- (2) A joint request may be made by 2 or more persons that are parties to the proposed change.

48 Report on proposal

- (1) The Bank may arrange for a suitably qualified person (**B**) to prepare a report on a proposed change to assist the Bank with performing or exercising its functions, powers, or duties under this subpart.
- (2) A person that makes a request and every other party to the proposed change must provide to B the information that B requires to assist them in preparing the report.

49 Bank must consider whether it would still be satisfied of licensing matters

The Bank must, in considering a request for approval under this subpart, consider whether, if the proposed change occurs, the Bank would still be satisfied of the matters set out in section 17 (which are the matters that the Bank must be satisfied of before an applicant is entitled to be issued with a licence).

50 Bank's decision on approval

- (1) The Bank may, after considering a request for approval under this subpart,—
- (a) give its approval unconditionally or subject to any conditions that the Bank may impose under subsection (3); or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed deposit taker and any other person who made the request within 20 working days after receiving both of the following:
- (a) all of the information that the Bank reasonably requires to assist it in determining whether to give its approval:
 - (b) all reports that the Bank has arranged to receive under this subpart in respect of the matter.
- (3) The approval may be subject to any conditions prescribed by the regulations or conditions that relate to matters prescribed in the regulations.
- (4) If the Bank refuses to give its approval, the notice under subsection (2) must contain a statement of its reasons for doing so.

51 Offence to contravene condition of approval

A person that contravenes a condition of approval imposed under section 50 commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$100,000:
- (b) in any other case, to a fine not exceeding \$2,500,000.

52 Requirement for approval is in addition to other requirements

This subpart does not limit any other legislation that must be complied with in order to give effect to a proposed change that requires approval under this subpart (for example, in the case of amalgamating companies, the requirements of Part 13 of the Companies Act 1993).

Subpart 6—Cancellation**53 Cancellation of licence**

- (1) The Bank may cancel a licence held by a person (A) if the Bank is satisfied that—
 - (a) the information provided under section 16 is false or misleading in a material particular and A has not yet commenced carrying on the business of borrowing and lending money in New Zealand;
 - (b) A has contravened a condition under section 24(1)(e)(i) (which requires A to commence carrying on the business of borrowing and lending money in New Zealand within a particular period);
 - (c) A is not, or is no longer, a deposit taker and A does not owe any obligations to pay money to any eligible depositor under any protected deposit;
 - (d) A has been liquidated, wound up, or dissolved or has otherwise ceased to exist.
- (2) For the purposes of subsection (1)(c), the Bank may disregard any obligation on A to pay money under a right of subrogation under subpart 4 of Part 6.

54 Process for cancelling licence

- (1) The Bank must, before cancelling a licence held by a person (A),—
 - (a) consult the FMA; and
 - (b) give A notice of the Bank's intention to cancel the licence; and
 - (c) have regard to any objections that are received before the close of the date specified under subsection (2)(b).
- (2) The notice given to A must—
 - (a) contain, or be accompanied by, a statement of the Bank's reasons for proposing to cancel the licence; and
 - (b) specify the date by which A must deliver any objection to the Bank (which must be not less than 20 working days after the date of the notice).
- (3) Subsection (1)(b) and (c) does not apply if—
 - (a) A asked the Bank to cancel its licence; or
 - (b) A has been liquidated, wound up, or dissolved or has otherwise ceased to exist.

55 Notice of cancellation

The Bank must, as soon as practicable after cancelling a licence held by a person (A), give—

- (a) notice of the cancellation on the Bank’s Internet site; and
- (b) in the case of a cancellation under section 53(1)(a) to (c), notice of the cancellation to A.

Subpart 7—Appeals

56 Appeals against licensing and fit and proper decisions

A person may appeal to the court against a decision of the Bank under this Part to—

- (a) decline to issue a licence to the person; or
- (b) decline to approve the person as a director or senior manager under subpart 4; or
- (c) remove the person as a director or senior manager under subpart 4.

57 Appeals against other decisions of Bank on questions of law only

A person that considers that any of the following decisions of the Bank is wrong in law may appeal to the court against the decision on a question of law only:

- (a) a decision to impose conditions on the person’s licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person’s licence; or
- (b) a decision to decline to give an approval under subpart 5.

58 Appeal does not operate as stay

An appeal under this subpart does not operate as a stay of any decision appealed against unless the court orders otherwise.

**Part 3
Regulation of deposit takers**

Subpart 1—Credit rating

59 Licensed deposit taker must have current credit rating

- (1) A licensed deposit taker must have a current credit rating that is given by an approved rating agency.
- (2) In this Act, a **credit rating**, in relation to a deposit taker, is a rating of its creditworthiness that complies with the requirements prescribed by the standards.

- (3) *See* section 70, which allows the Bank to grant an exemption from this section.

60 Offence to fail to have current credit rating

A licensed deposit taker that contravenes section 59 commits an offence and is liable on conviction to a fine not exceeding \$2,500,000.

61 Bank may approve rating agencies

- (1) The Bank may approve a person as a rating agency for the purposes of this Act.
- (2) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:
- (a) the independence of the rating agency:
 - (b) the adequacy of resources available to the rating agency:
 - (c) the credibility and objectivity of the rating agency's methodology:
 - (d) the consistency and comparability of the rating agency's ratings when assessed against ratings industry practice:
 - (e) the adequacy of the rating agency's disclosure of information, including information about its processes, experience, and ownership:
 - (f) relevant international standards, codes, and recommended practices relating to the ratings industry.

62 List of approved rating agencies

The Bank must publish and keep up to date a list of approved rating agencies on the Bank's Internet site at all reasonable times.

63 Bank may review approval

- (1) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in section 61(2).
- (2) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.
- (3) A credit rating given to a deposit taker by an agency at a time when the agency was an approved rating agency does not cease to be a rating from an approved rating agency for the purposes of this Act by reason of the fact that the approval of the agency has expired or has been revoked.

64 Licensed deposit taker must notify Bank of change in rating

- (1) A licensed deposit taker must, within 20 working days after receiving notice that its credit rating has changed, deliver to the Bank a certificate by the approved rating agency of the new rating.
- (2) The certificate must state the date on which it was given.

- (3) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
- (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

65 Licensed deposit taker must notify Bank of credit watch warning

- (1) A licensed deposit taker must, within 20 working days after receiving notice that a credit watch warning has been given in respect of the deposit taker's credit rating, deliver to the Bank a certificate by the approved rating agency of the credit watch warning.
- (2) The certificate must state the date on which it was given and the reasons for it.
- (3) In this section, **credit watch warning** means any word, expression, or symbol used by an approved rating agency to indicate that the agency has a deposit taker under consideration with a view to a possible downgrading in a credit rating given to the deposit taker by the agency.
- (4) A licensed deposit taker that contravenes subsection (1) commits an infringement offence and is liable to—
- (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

66 Disclosure of credit rating on licensed deposit taker's Internet site

- (1) This section applies to a licensed deposit taker (A) if—
- (a) A is required to comply with section 59 or A otherwise has a current credit rating given by an approved rating agency; and
 - (b) an Internet site that is maintained by, or on behalf of, A contains information or advertising about debt securities issued by A that are offered in New Zealand.
- (2) A must ensure that the Internet site—
- (a) states clearly and prominently—
 - (i) A's current credit rating; and
 - (ii) the name of the agency by which the rating was given; and
 - (iii) the rating scale of which the rating forms part; or
 - (b) contains a prominent link to another Internet site that clearly and prominently states the matters specified in paragraph (a).
- (3) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
- (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

67 Other advertising of credit ratings

- (1) A licensed deposit taker may distribute an advertisement that refers to its current credit rating, or to any part of the rating, only if the advertisement also states clearly and prominently—
 - (a) the rating; and
 - (b) the name of the agency that gave the rating; and
 - (c) that a description of any scale of which the rating forms part is available on a specified Internet site.
- (2) The Internet site that is specified may be an Internet site maintained by, or on behalf of, the licensed deposit taker or the agency that gave the rating.
- (3) For the purposes of this section and section 68,—
 - (a) an advertisement is **distributed** if it is communicated to the public in New Zealand (with a view to obtaining business from relevant investors) by newspaper, magazine, brochure, pamphlet, notice, circular, radio or television broadcast, film, the Internet, or other means; and
 - (b) **relevant investor** means a person to whom the licensed deposit taker makes an offer referred to in clause 2(2)(a) of Schedule 2.
- (4) However, this section does not apply to advertising on an Internet site that is maintained by, or on behalf of, a licensed deposit taker (but section 66 will apply).
- (5) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

68 Licensed deposit taker must not disclose or advertise credit ratings from non-approved agencies

- (1) A licensed deposit taker must not—
 - (a) disclose to a relevant investor a rating from a non-approved agency; or
 - (b) distribute an advertisement for any of the deposit taker's deposit-taking business that refers to a rating from a non-approved agency.
- (2) Subsection (1)(a) does not apply to a disclosure to an associated person or employee of the deposit taker.
- (3) In this section, **rating from a non-approved agency**—
 - (a) means, in relation to a licensed deposit taker, an assessment of its credit or creditworthiness that is in substance a credit rating or financial strength rating (whether called a rating, grading, scoring, ranking, or by any other name) that is issued or given by an agency that is not an approved rating agency; but

- (b) does not include a credit rating referred to in section 63(3).
- (4) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

69 Licensed deposit taker must give public notice of downgrade

- (1) If a licensed deposit taker’s credit rating is downgraded, the deposit taker must give notice of the downgrade.
- (2) The notice—
 - (a) must be published on an Internet site maintained by, or on behalf of, the deposit taker; and
 - (b) must be published within 10 working days after the downgrade is given; and
 - (c) may include any additional matter that the deposit taker considers is relevant to a proper understanding of the reasons for the downgrade.
- (3) In this section, a deposit taker’s credit rating is **downgraded** if it is given a credit rating by an approved rating agency that is lower than its immediately preceding credit rating.
- (4) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

70 Bank may grant exemptions from credit rating requirements

- (1) The Bank may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons from compliance with section 59 (which relates to credit ratings).
- (2) The Bank’s reasons for granting an exemption (including why it is appropriate) must be published together with the exemption.
- (3) An exemption granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

71 Restriction on Bank's exemption power

- (1) The Bank must not grant an exemption from compliance with section 59 unless it is satisfied that—
- (a) the exemption is not inconsistent with the purposes of this Act; and
 - (b) the costs of compliance with the provision would be unreasonable or not justified by the benefit of compliance; and
 - (c) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (2) When considering the matters under subsection (1), the Bank must have regard to—
- (a) the size and nature of the businesses of the licensed deposit takers to which the exemption will relate; and
 - (b) the extent to which the risks associated with not having a credit rating could be addressed or mitigated by the terms or conditions of the exemption (for example, a condition that requires an exempted deposit taker to hold additional capital).
- (3) Subsection (2) does not limit section 4.

Guidance note

Section 4 requires the Bank to take into account certain principles. Those include the desirability of the deposit-taking sector comprising a diversity of institutions to provide access to financial products and services to a diverse range of New Zealanders.

Subpart 2—Standards**72 Bank may issue standards**

- (1) The Bank may, in accordance with this subpart, issue standards if the Bank is satisfied that the standards are necessary or desirable for 1 or more of the purposes of this Act.
- (2) Standards issued under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

73 Licensed deposit taker must comply with applicable standards

- (1) A licensed deposit taker must comply with all applicable standards.

- (2) See subpart 2 of Part 5, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard.

74 Application of standards

- (1) A standard may do either or both of the following:
- (a) apply to all deposit takers, a particular deposit taker, or a class of deposit takers:
 - (b) apply in all circumstances, particular circumstances, or a class of circumstances.

Example

Different lending standards may apply to lending to customers in different geographical areas.

- (2) A standard may provide for either or both of the following (see section 24(1)(a) and (b)):
- (a) the standard to apply to a deposit taker if a condition of its licence states that the standard applies:
 - (b) a requirement of the standard to apply to a deposit taker if a condition of its licence states that the requirement applies.
- (3) Subsection (2) does not limit subsection (1).
- (4) If a matter referred to in any of sections 78 to 90 is specified as including certain specific matters, those specific matters do not limit the matter referred to.

Procedural matters

75 Procedure for issuing standards

- (1) Before issuing a standard (the **proposed standard**), the Bank must—
- (a) notify the Minister of the prudential policy that the Bank intends to implement through the proposed standard; and
 - (b) consult the other members of the Council of Financial Regulators; and
 - (c) consult the persons, or representatives of the persons, that the Bank considers will be substantially affected by the issue of the proposed standard.

Guidance note

See *also* section 49 of the Reserve Bank of New Zealand Act 2021, which requires the board of the Bank to have regard to the financial policy remit when the Bank is issuing standards.

- (2) A failure to comply with this section does not affect the validity of any standard.

76 When procedural requirements do not apply

- (1) Section 75(1)(a) does not apply if—
 - (a) the proposed standard will apply only to a particular deposit taker; or
 - (b) the Bank is satisfied that the prudential policy is of a minor or technical nature only.
- (2) Section 75(1)(b) and (c) does not apply to a standard that amends another standard if the Bank is satisfied that the amendment—
 - (a) is only correcting a minor error; or
 - (b) is otherwise of a minor or technical nature only.

*Proportionality framework***77 Bank must prepare and publish framework for taking proportionality principle into account when developing standards**

- (1) The Bank must—
 - (a) prepare and keep up to date a proportionality framework; and
 - (b) publish a copy of the framework on the Bank's Internet site.
- (2) The proportionality framework must set out how the Bank takes into account, or proposes to take into account, the principle under section 4(a)(i) when it is developing standards.

Guidance note

The principle under section 4(a)(i) relates to the desirability of taking a proportionate approach to regulation and supervision.

- (3) When preparing the proportionality framework, the Bank must have regard to the following:
 - (a) the size and nature of the businesses of different deposit takers;
 - (b) the extent to which a range of different requirements are necessary or desirable to promote the safety and soundness of each deposit taker;
 - (c) the relative importance of different deposit takers to the stability of the financial system.
- (4) Before publishing the proportionality framework, the Bank must consult the persons, or representatives of the persons, that the Bank considers will be substantially affected by the framework.

*Subject matter of standards***78 Governance, incorporation structure, and ownership**

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the governance of a deposit taker, including—

- (i) its organisational structure and the structure of its licensed deposit taker group; and
 - (ii) the composition, size, and structure of the governing body; and
 - (iii) the responsibilities of the governing body, of committees of that body, and of its management:
- (b) the remuneration of, and incentives available to, directors, senior managers, and employees and for any compensation or other benefits payable to directors, senior managers, and employees who cease to hold office, including matters relating to—
- (i) governance of remuneration and incentive practices; and
 - (ii) alignment of those practices with prudent risk taking; and
 - (iii) supervisory oversight and engagement by stakeholders:
- (c) the incorporation structure of a deposit taker, including matters relating to—
- (i) a deposit taker’s constitution (including prohibiting or restricting provisions that may be included in a constitution or requiring a constitution to include specified provisions); and
 - (ii) whether a deposit taker must be incorporated under New Zealand legislation:
- (d) the ownership structure of a deposit taker and its ownership.

79 Capital, liquidity, security interests, and credit ratings

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) capital, including matters relating to capital ratios, minimum capital, assessing capital adequacy, capital recognition, capital repayment, defining categories of qualifying capital, and methods of calculating capital:
- (b) liquidity, including matters relating to managing liquidity risk, contingency funding, defining categories of qualifying liquidity, and methods of calculating liquidity:
- (c) security interests given over the property of the deposit taker, including 1 or more of the following:
 - (i) limits on the proportion of the deposit taker’s property that may be subject to a security interest:
 - (ii) restrictions or prohibitions on the property to which a security interest may relate:
 - (iii) restrictions or prohibitions on who may be given a security interest over the deposit taker’s property:
 - (iv) any other requirements relating to the terms and conditions of agreements that create or provide for a security interest:

- (d) ratings of creditworthiness required to be held by a licensed deposit taker, including—
 - (i) the type of rating (for example, whether it is a short-term or long-term rating); and
 - (ii) what the rating must relate to (for example, whether it indicates the creditworthiness of a deposit taker with respect to a specific financial obligation or applies to the deposit taker's overall creditworthiness).

80 Bail-in standards

- (1) A standard may regulate, deal with, or otherwise relate to bail-in instruments (a **bail-in standard**).
- (2) A bail-in standard may (without limitation) do 1 or more of the following:
 - (a) require a licensed deposit taker (A) to issue, enter into, or be a party to 1 or more kinds of bail-in instruments:
 - (b) specify the terms and conditions that must be included in those bail-in instruments:
 - (c) specify the events or other circumstances in which the matters in subsection (4)(a), (b), (c), or (d) occur:
 - (d) specify the manner in which those bail-in instruments must be offered, entered into, or arranged:
 - (e) provide for how much must be raised in connection with those bail-in instruments and how much must be owed in connection with those bail-in instruments.
- (3) The events or circumstances under subsection (2)(c) may include either or both of the following:
 - (a) the Bank giving a direction under subpart 3 of Part 7:
 - (b) the Bank giving a notice to A.
- (4) A **bail-in instrument** is a financial product or any other agreement the terms and conditions of which provide for 1 or more of the following:
 - (a) the financial product or any rights or interests in connection with the agreement to be converted into, or exchanged for, 1 or more equity securities (or some other financial product) of A or of a subsidiary of A:
 - (b) the reduction or cancellation of an amount owing under the financial product or agreement (in whole or in part):
 - (c) the extension of the time for payment of an amount owing under the financial product or agreement (in whole or in part):
 - (d) any other variation of the terms and conditions of the financial product or agreement.

Examples

Convertible debt securities

A bail-in standard requires a licensed deposit taker (**A**) to have at least \$1 billion worth of convertible debt securities.

The standard requires the debt securities to be offered under particular terms and conditions. Under those terms and conditions, the Bank may give a direction to A that triggers the conversion of those debt securities into ordinary shares in A.

Loan under which amount may be written off

A bail-in standard requires a licensed deposit taker (**B**) to raise at least \$1 billion through bail-in instruments. B could borrow at least \$1 billion from another company, with the bail-in standard requiring the borrowing to be on certain terms and conditions. Under those terms and conditions, a certain portion of the debt is written off if B enters into resolution or liquidation.

81 Fit and proper persons

- (1) A standard may regulate, deal with, or otherwise relate to matters to ensure that only a fit and proper person may be appointed to, and continue to hold, a position as a director or senior manager, including—
 - (a) specifying the matters that are relevant to the consideration of whether a person is a fit and proper person to be appointed to, and continue to hold, a position as a director or senior manager; and
 - (b) specifying the information that must be provided to the Bank when seeking the Bank's approval of the appointment of a director or senior manager; and
 - (c) specifying the contents of fit and proper certificates; and
 - (d) imposing requirements for establishing, implementing, maintaining, and complying with a policy for the purpose of ensuring that only fit and proper persons are appointed to, and continue to hold, positions as directors or senior managers (a **fit and proper policy**); and
 - (e) imposing requirements for re-assessing whether a director or senior manager is a fit and proper person to continue to hold their position; and
 - (f) specifying, for the purposes of section 26(3)(a), terms and conditions in connection with a senior manager who is appointed on an interim basis (for example, a term or condition relating to the permitted period of appointment and requirements that must be complied with before the person is appointed).
- (2) A standard for a fit and proper policy may (without limitation) require the policy to do 1 or more of the following:
 - (a) specify the qualifications, requirements, and other criteria for a particular position, including matters relating to a person's character, competence, and experience relative to the duties of the position:

- (b) contain provisions to encourage any person to disclose information to the deposit taker or the Bank that may be relevant to a fit and proper assessment:
- (c) contain provisions for giving or obtaining any consents required for the collection and use of any information by—
 - (i) the deposit taker to comply with the policy or subpart 4 of Part 2; and
 - (ii) the Bank for the performance or exercise of its functions, powers, or duties in connection with the policy.

82 Lending and other exposures

- (1) A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:
 - (a) loan concentration and risk exposures:
 - (b) a deposit taker's business of lending money (a **lending standard**):
 - (c) exposures to related parties of a deposit taker, including any of the following matters:
 - (i) requiring transactions between a deposit taker and any related party to be entered into only on a particular basis (for example, on arm's-length terms):
 - (ii) monitoring transactions between a deposit taker and any related party:
 - (iii) managing risks arising from exposures to any related party:
 - (iv) writing-off exposures to any related party:
 - (v) any other limits or restrictions on exposures to related parties.
- (2) A lending standard may specify income-based criteria, asset-based criteria, or any other criteria that must be applied by a deposit taker (or non-deposit-taking lender) when determining whether a person qualifies for a loan or the provision of any other credit.

Examples of criteria

The types of criteria that may be specified include debt-to-income ratios and loan-to-value ratios.

- (3) A lending standard may impose reporting requirements in connection with the other requirements of the standard.
- (4) A standard may define related party for the purposes of subsection (1)(c).
- (5) In this subpart, **lending** means providing credit under credit contracts (within the meaning of clause 1 of Schedule 2).

83 Classes of lending must be prescribed by regulations

- (1) A lending standard may relate only to the class or classes of lending that are prescribed by the regulations.
- (2) The regulations may prescribe classes of lending by reference to the purpose of the lending, the nature of the lending, or any other circumstances in which the lending occurs.

84 Application of lending standards may extend to non-deposit-taking lenders

- (1) A lending standard may apply to a particular non-deposit-taking lender or class of non-deposit-taking lenders if the regulations authorise the Bank to issue a lending standard with that application.
- (2) A non-deposit-taking lender to which a lending standard applies must comply with the standard (*see* subpart 2 of Part 5, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard).

85 Risk management, business continuity planning, and problem assets

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the management by a deposit taker of 1 or more of the following risks (including policies and processes to identify, measure, evaluate, monitor, report on, control, and mitigate those risks):
 - (i) operational risk:
 - (ii) credit risk:
 - (iii) liquidity risk:
 - (iv) interest rate risk:
 - (v) concentration risk:
 - (vi) market risk:
 - (vii) model risk (for example, the risk that a model for calculating capital will not perform adequately):
 - (viii) cybersecurity risk:
- (b) policies and processes for—
 - (i) business continuity planning:
 - (ii) the early identification and management of problem assets (including the classification and valuation of those assets); and
 - (iii) maintaining adequate provisions and reserves in connection with problem assets.

86 Depositor compensation

A standard may regulate, deal with, or otherwise relate to any 1 or more of the following matters in connection with the depositor compensation scheme:

- (a) making available to the Bank the information that the Bank considers is necessary or desirable for the performance or exercise of its functions, powers, or duties under Part 6 (including information about the size and composition of protected deposits and information about depositors to determine actual or potential entitlements to compensation under that Part):
- (b) gathering the information referred to in paragraph (a):
- (c) providing for the identification of a debt security as being issued out of, or administered by, an overseas office or branch of a licensed deposit taker or a New Zealand office or branch of that deposit taker (*see* section 192(2)(a)):
- (d) facilitating the Bank's ability to provide entitlements to compensation to, or on account of, eligible depositors under Part 6 as soon as practicable after a specified event notice is issued (for example, to enable the Bank to quickly and accurately identify eligible depositors and protected deposits in connection with that notice).

Guidance note

See section 88, which provides for disclosure standards to relate to matters in connection with the depositor compensation scheme.

87 Covered bonds and securitisation

A standard may regulate, deal with, or otherwise relate to any 1 or more of the following in connection with covered bonds or other securitisation arrangements:

- (a) information that must be provided to the Bank for the purposes of sub-part 10 of Part 7:
- (b) requirements in relation to covered bonds for the purposes of section 411(2)(g):
- (c) limits on the proportion of property that may be beneficially owned by a person (for example, a special purpose vehicle) that grants, or may grant, a security interest in its property for the benefit of a holder of a covered bond:
- (d) restrictions or prohibitions on the property to which a covered bond or any other securitisation arrangement may relate:
- (e) restrictions or prohibitions on who may be a party to a covered bond or other securitisation arrangement:
- (f) any other requirements relating to the terms and conditions of covered bonds or other securitisation arrangements.

88 Disclosure of information

- (1) A standard may regulate, deal with, or otherwise relate to the disclosure of information to the Bank, the public, or any other person or class of persons (a **disclosure standard**).
- (2) A disclosure standard may (without limitation)—
 - (a) provide for when and how disclosure information must be published, provided, or otherwise made available, including providing for any of the following:
 - (i) any document of the kind that is specified in the standard and that is required by any relevant legislation to contain, be amended to contain, or be accompanied by the disclosure information:
 - (ii) any other communication of the kind that is specified in the standard to contain, or be accompanied by, the disclosure information:
 - (iii) a symbol to be used in the circumstances specified in the standard; and

Example

A standard may require a deposit taker to use a symbol to identify its protected deposits in advertisements, on Internet sites, and in account statements.

- (b) provide to whom the disclosure information must be published, provided, or otherwise made available (for example, the Bank, the public, or a particular class of the public); and
- (c) prescribe the information that must, or must not, be disclosed in the disclosure information, including requiring the disclosure of information about any of the following in connection with a licensed deposit taker or licensed deposit taker group:
 - (i) governance and other corporate matters:
 - (ii) financial matters (for example, the deposit taker's financial condition and performance):
 - (iii) risk exposure and risk management:
 - (iv) prudential matters:
 - (v) matters in connection with the depositor compensation scheme:
 - (vi) any other matters relating to the business, operation, and management of the deposit taker or licensed deposit taker group; and
- (d) prohibit or restrict the use in disclosure information of prescribed words, information, sounds, images, graphics, or other matters; and
- (e) prescribe requirements for preparing and presenting financial information; and

- (f) prescribe requirements as to the layout or method of presentation of disclosure information (including the length of a document that contains the information and of the parts of that document, the size of type used, and when information may be incorporated by reference); and
 - (g) prescribe the documents that must, or must not, accompany disclosure information.
- (3) In this section, **disclosure information** means the document or other information that must be published, provided, or otherwise made available under a disclosure standard.
- (4) In this section, **relevant legislation** means any of the following:
- (a) prudential legislation:
 - (b) financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011:
 - (c) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and any regulations made under that Act.

89 Contingency and recovery plans and facilitating resolution under Part 7

Contingency and recovery plans

- (1) A standard may regulate, deal with, or otherwise relate to contingency and recovery plans, including 1 or more of the following matters:
- (a) the purposes for which a deposit taker must have those plans (for example, to ensure that a deposit taker is reasonably prepared in the event of a resolution under subparts 4 to 8 of Part 7):
 - (b) the contents of those plans, for example, the scenarios the plans must cover and the strategies and methods that must be included in the plans for dealing with those scenarios:
 - (c) the persons responsible for maintaining, activating, or implementing those plans:
 - (d) the notifying of the Bank of the activation of those plans:
 - (e) the arrangements for activating and implementing those plans (for example, obtaining necessary human, technological, financial, and other resources):
 - (f) the reviewing, updating, or testing of those plans:
 - (g) the changing of those plans (including when the Bank requires a change to be made).

Facilitating resolution under Part 7 (including pre-positioning requirements)

- (2) A standard may regulate, deal with, or otherwise relate to any matters to ensure that, in the event of a resolution under subparts 4 to 8 of Part 7, the resolution can be carried out in an orderly manner and otherwise in accordance with the

purposes set out in section 259, including requirements in connection with the following:

- (a) the deposit taker having appropriate capacity and capability to help ensure that any financial distress or other difficulties that may occur are dealt with in an orderly manner (for example, having appropriate policies, processes, controls, or other arrangements in place):
- (b) an implementation plan in connection with the matters referred to in paragraph (a):
- (c) a regular process to test the matters referred to in paragraph (a).

Examples

Mechanisms to support customers' access

A standard may require a bank (**A**) to have mechanisms in place ahead of a bank failure for the purpose of ensuring that A's customers have some continued access to liquidity and banking services (in particular, mechanisms to enable customers to quickly access their transactional account to a certain extent after A enters resolution).

Mechanisms to support separability

A's business has 3 main parts: residential property lending, rural lending, and other business lending.

A standard may require A to arrange its operations to enable those parts to be efficiently restructured or separated out if A enters resolution. See the example in section 319, which shows how the Bank's disposal power in a resolution may be exercised to separate out those parts.

90 Other matters

- (1) A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

Outsourcing

- (a) arrangements for any business, or functions relating to any business, of a deposit taker to be carried on by any person other than the deposit taker:

Significant transactions

- (b) when a transaction is a significant transaction in respect of which approval is required under subpart 5 of Part 2 and when a part of a business is material for the purposes of section 41:

Restrictions or prohibitions on activities

- (c) restrictions or prohibitions on either or both of the following:
- (i) the activities that a deposit taker may carry out other than in their capacity as a deposit taker:
 - (ii) the activities that a deposit taker (other than an overseas person) may carry out outside New Zealand:

Internal controls and internal assurance function

- (d) internal controls and assurance, including—
 - (i) internal controls in connection with organisational structure, accounting systems, checks and balances, and safeguarding property; and
 - (ii) the review and assessment of the adequacy and effectiveness of internal controls; and
 - (iii) the performance of an independent and effective internal assurance function:

Matters prescribed in regulations

- (e) any other matters that may be prescribed in the regulations.
- (2) In this section, **internal assurance function** includes—
- (a) assessing policies, processes, and internal controls; and
 - (b) providing assurance that policies and processes are being complied with.

*Bank's approval may be required***91 Standards may require Bank's approval**

- (1) A standard may impose a requirement for the Bank's approval in connection with a matter referred to in any of sections 78 to 90.

Examples*Standard relating to capital*

A standard may require the Bank's approval relating to capital recognition, capital repayment, and methodologies for calculating capital adequacy.

Standard relating to overseas activities

A standard may require a deposit taker to obtain the Bank's approval before establishing an overseas branch or subsidiary.

- (2) If a standard provides for the Bank's approval,—
- (a) the standard must set out an appropriate manner in which the Bank must decide whether to give its approval and any conditions of the approval (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding those matters); and
 - (b) a request for approval must be made in the manner specified by the Bank.

- (3) A contravention of a condition of the Bank's approval must be treated as being a contravention of the standard that imposed the requirement for the Bank's approval.

Guidance note

See subpart 2 of Part 5, which allows the court to impose a pecuniary penalty for a contravention of a standard (which includes a contravention of a condition of the Bank's approval).

Conditions

92 Standards may provide for matters to be specified by conditions

- (1) The purpose of this section is to provide the flexibility to allow the requirements or other matters in standards to be set in a manner that takes into account the circumstances of particular deposit takers.
- (2) A standard may provide for a requirement or other matter to be specified by a condition of a licence if the Bank, after having regard to the considerations under subsection (3), is satisfied as referred to in subsection (4).

Example

A standard specifies a range of quantitative capital requirements and provides for the requirements that apply to a particular deposit taker to be set within that range in the conditions of the deposit taker's licence.

- (3) The Bank must have regard to—
- (a) the purpose of this section; and
 - (b) whether the requirement or other matter would be more appropriately dealt with in standards only (rather than being specified by a condition of a licence).
- (4) The Bank must be satisfied that the standard—
- (a) sets an appropriate range or limit within which the requirement or matter may be specified by the condition; or
 - (b) sets out an appropriate manner for the Bank to decide on the terms of the condition (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding what condition is to apply).

Subpart 3—Directors' and New Zealand chief executive officers' due diligence duty

93 Duty of directors of licensed deposit takers

- (1) Every director of a licensed deposit taker must exercise due diligence to ensure that the deposit taker complies with its prudential obligations.

- (2) For the purposes of this section, the director must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances, taking into account (without limitation)—
 - (a) the size and nature of the business of the deposit taker; and
 - (b) the position of the director and the nature of the responsibilities undertaken by the director.
- (3) In this section, **prudential obligation** has the meaning set out in section 6, except that it does not include an obligation imposed by or under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or regulations made under that Act.
- (4) This section does not apply in relation to an overseas licensed deposit taker (*see instead* section 94).
- (5) *See* subpart 2 of Part 5, which provides for a court to impose a pecuniary penalty for a contravention of the duty under this section.

Compare: 2015 No 70 s 44

94 Duty of New Zealand chief executive officers of overseas licensed deposit takers

- (1) Every New Zealand chief executive officer of an overseas licensed deposit taker must exercise due diligence to ensure that the deposit taker complies with its prudential obligations.
- (2) For the purposes of this section, the New Zealand chief executive officer must exercise the care, diligence, and skill that a reasonable New Zealand chief executive officer would exercise in the same circumstances, taking into account (without limitation)—
 - (a) the size and nature of the business of the deposit taker; and
 - (b) the position of the New Zealand chief executive officer and the nature of the responsibilities undertaken by them.
- (3) In this section, **prudential obligation** has the meaning set out in section 6, except that it does not include an obligation imposed by or under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 or regulations made under that Act.
- (4) *See* subpart 2 of Part 5, which provides for a court to impose a pecuniary penalty for a contravention of the duty under this section.

95 Meaning of due diligence

In this subpart, **due diligence** includes taking reasonable steps to ensure that the deposit taker—

- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with the prudential obligations; and

- (b) has in place methods for systematically identifying deficiencies in the effectiveness of the procedures for compliance; and
- (c) promptly remedies any deficiencies discovered.

96 Use of information and advice

- (1) This section applies to each of the following persons (A) when they are performing duties under this subpart:
 - (a) a director of a licensed deposit taker;
 - (b) a New Zealand chief executive officer of an overseas licensed deposit taker.
- (2) A may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:
 - (a) an employee of the licensed deposit taker whom A believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
 - (b) a professional adviser or expert in relation to matters which A believes on reasonable grounds to be within the person's professional or expert competence;
 - (c) in the case of a director, any other director or committee of directors upon which A did not serve in relation to matters within the other director's or committee's designated authority.
- (3) However, subsection (2) applies to A only if they—
 - (a) act in good faith; and
 - (b) make proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) have no knowledge that such reliance is unwarranted.

97 Bank must prepare guidance about due diligence duties

- (1) The Bank must—
 - (a) prepare and keep up to date guidance about the duties under this subpart; and
 - (b) publish a copy of the guidance on the Bank's Internet site.
- (2) The guidance must include guidance about the respective roles and responsibilities of directors and senior managers.
- (3) Before publishing the guidance, the Bank must consult—
 - (a) the persons, or representatives of the persons, that the Bank considers will be substantially affected by the duties under this subpart; and
 - (b) 1 or more entities that—

- (i) issue guidance, or provide training, in relation to directors' duties or other matters relating to governance; or
 - (ii) otherwise act as a professional body for directors.
- (4) As soon as practicable after publishing the guidance, the Bank must also publish on its Internet site—
 - (a) a list of the names of the persons that made a written submission to the Bank as part of the consultation process under subsection (3); and
 - (b) a copy of each of those submissions.
- (5) However, the Bank is not required to publish a copy of the whole or any part of a submission under subsection (4) if—
 - (a) the person who made the submission requests (in the manner that is specified by the Bank) that the Bank not publish the submission or that part; or
 - (b) the Bank is satisfied that there is a good reason to not publish the submission or that part (for example, to protect the privacy of an individual, to protect confidential information, or to avoid infringing copyright).

Part 4

Supervision of deposit takers

Bank to undertake prudential supervision

98 Prudential supervision

The Bank must in accordance with this Part undertake prudential supervision of licensed deposit takers.

Subpart 1—Bank's information-gathering power

99 Bank may require person to supply information for purposes of Act

- (1) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may, by notice to any person, require the person to do 1 or more of the following:
 - (a) give to the Bank any information, or class of information, that is specified in the notice;
 - (b) produce for inspection any documents, or class of documents, that are specified in the notice;
 - (c) if necessary, reproduce, or assist in reproducing, in usable form, information recorded or stored in those documents.
- (2) The information required under subsection (1)(a) must be given—
 - (a) for the periods, and in the form (including consolidated form), that may be specified in the notice; and

- (b) in respect of the business, operation, or management of a person who is or may be any of the following:
 - (i) a deposit taker or any other financial service provider;
 - (ii) an associated person of a deposit taker; and
 - (c) in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent, or intermediary; and
 - (d) within the period, and otherwise in the manner, that is specified in the notice.
- (3) The person must comply with subsection (1)(b) and (c) within the period, and otherwise in the manner, that is specified in the notice.
 - (4) The Bank may take copies of any documents produced for inspection under subsection (1).
 - (5) For the purposes of this Act, a reference to matters relating to the **business, operation, or management** of a person includes the corporate, financial, or prudential matters of the person.

100 Offence to fail to supply information

- (1) A person commits an offence if they refuse or fail, without reasonable excuse, to comply with a notice under section 99.
- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

101 Bank may require report relating to licensed deposit taker or associated person

- (1) The Bank may, by notice to a licensed deposit taker, require the deposit taker to give the Bank a report or series of reports on any matters relating to the business, operation, or management of either or both of the following:
 - (a) the deposit taker;
 - (b) any associated person of the deposit taker.
- (2) The report or series of reports must be prepared by a person approved by the Bank.
- (3) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be given.
- (4) The licensed deposit taker must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

102 Associated person must supply information

An associated person of the licensed deposit taker must, if required to do so by the deposit taker, supply information relating to the person in order to enable the deposit taker to comply with a notice under section 101.

103 Bank may require report to be published

- (1) The Bank may, by notice to a licensed deposit taker, require the deposit taker to publish a report or series of reports under section 101 (whether in whole or in part).
- (2) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be published.
- (3) The licensed deposit taker must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

104 Offence to fail to give or publish report

A licensed deposit taker or an associated person that, without reasonable excuse, contravenes a requirement under any of sections 101 to 103 commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in any other case, a fine not exceeding \$500,000.

105 Requirement that information be audited or reviewed

- (1) The Bank may, by notice, require a licensed deposit taker or other person to obtain an audit or a review of any information that the deposit taker or other person is required to give to the Bank under—
 - (a) this subpart; or
 - (b) an applicable standard or a condition; or
 - (c) any other prudential obligation.
- (2) The audit or review must be carried out by an auditor, or other person, approved by the Bank.
- (3) The licensed deposit taker or other person must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

106 Offence to fail to obtain audit or review

A licensed deposit taker or other person that, without reasonable excuse, contravenes a requirement under section 105 commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in any other case, a fine not exceeding \$500,000.

107 Disclosure of information to Bank by auditors

- (1) This section and sections 108 to 110 apply to a person (an **auditor**) who holds, or at any time has held, office as required by any legislation, as an auditor of a licensed deposit taker or of an associated person of a licensed deposit taker.
- (2) An auditor must disclose to the Bank information relating to the affairs of the licensed deposit taker or associated person obtained in the course of holding office as auditor if, in the opinion of the auditor,—
 - (a) the licensed deposit taker or associated person—
 - (i) has contravened a prudential obligation; or
 - (ii) has contravened section 455 of the FMCA or any other legislation that requires proper accounting records to be kept; or
 - (iii) has contravened subpart 3 of Part 7 of the FMCA or any other legislation that relates to the preparation, audit, lodgement, or filing of financial statements; or
 - (iv) is in serious financial difficulties; or
 - (v) is, or has been, operating fraudulently or recklessly; and
 - (b) the disclosure of the information is likely to assist, or be relevant to, the performance or exercise by the Bank of its functions, powers, or duties under this Act.

108 Auditor to inform of intention to disclose

An auditor must, before disclosing any information to the Bank under section 107, take reasonable steps to inform the licensed deposit taker or associated person of the intention to disclose the information and the nature of the information.

109 Protection of auditor

- (1) No civil, criminal, or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Bank under section 107.
- (2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of an auditor may make any order against, or do any act in relation to, the auditor in respect of the disclosure referred to in subsection (1).

110 Admissibility of information

- (1) No information received by the Bank under section 107 is admissible in evidence in any proceedings against the auditor concerned.
- (2) This section does not limit the admissibility of any information obtained in any other way.

Subpart 2—On-site inspection

111 Purpose

The purpose of this subpart is to facilitate the Bank’s ability to undertake prudential supervision of licensed deposit takers by doing 1 or more of the following:

- (a) assessing the adequacy of a licensed deposit taker’s policies, processes, controls, or other arrangements for complying with its prudential obligations:
- (b) verifying a licensed deposit taker’s compliance with its prudential obligations:
- (c) verifying the reliability of information supplied to the Bank by a licensed deposit taker under this Act:
- (d) examining any matter relating to the business, operation, or management of a licensed deposit taker in order to understand and identify risks in connection with those matters:
- (e) monitoring a licensed deposit taker’s compliance with a remedial notice or plan under subpart 4:
- (f) examining the financial position or performance or cash flows of a licensed deposit taker:
- (g) carrying out a review of all, or 1 or more classes of, licensed deposit takers, in connection with 1 or more matters of prudential supervision (for example, a review of governance throughout the deposit-taking sector):
- (h) doing any other thing that is incidental and related to, or consequential on, any thing that the Bank does under paragraphs (a) to (g).

112 Bank may conduct on-site inspection

- (1) The Bank may enter and remain at any relevant place to carry out an on-site inspection of a licensed deposit taker if the Bank considers it necessary or desirable for the purposes of doing 1 or more of the things referred to in section 111.
- (2) The Bank—
 - (a) may exercise the power only at a reasonable time and in a reasonable manner; but
 - (b) is not required to give notice of the exercise of the power.
- (3) In this subpart, **relevant place**, in relation to a licensed deposit taker, means any place of business of the deposit taker.

113 Person may be required to answer questions or give information

During an on-site inspection, the Bank may require any employee, director, or agent of the licensed deposit taker to—

- (a) answer questions relating to its records and documents; and
- (b) give all other information that the Bank may reasonably require for the purpose of the inspection.

114 Offence relating to on-site inspection

- (1) An employee, a director, or an agent of the licensed deposit taker commits an offence if they, without reasonable excuse,—
 - (a) refuse or fail to comply with a requirement under section 113 to answer any questions or give information; or
 - (b) resist, obstruct, or delay the Bank in carrying out an on-site inspection under this subpart.
- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

Subpart 3—Reporting duty

115 Licensed deposit taker must monitor compliance

Every licensed deposit taker must ensure that there are in place effective methods for monitoring the licensed deposit taker's compliance with the prudential obligations.

116 Licensed deposit taker must report contraventions

- (1) This section applies if a licensed deposit taker believes that it has contravened, may have contravened, or is likely to contravene a prudential obligation in a material respect.
- (2) The licensed deposit taker must, as soon as practicable after it forms the belief, give the Bank a report containing—
 - (a) details of the belief; and
 - (b) the licensed deposit taker's grounds for the belief; and
 - (c) all other information prescribed by the regulations (if any).

117 Offence to fail to monitor compliance and report contraventions

A licensed deposit taker that, without reasonable excuse, contravenes section 115 or 116 commits an offence and is liable on conviction to a fine not exceeding \$500,000.

118 Restriction on use of report

A report given by a licensed deposit taker under this subpart is not admissible as evidence in a civil or criminal proceeding against the deposit taker, except in a criminal proceeding that concerns the falsity of the report.

Subpart 4—Remedial notices and plans

119 Bank may require licensed deposit taker to take action in relation to contravention

- (1) This section applies if—
 - (a) a licensed deposit taker has given the Bank a report under subpart 3; or
 - (b) the Bank otherwise has reasonable grounds to believe that a licensed deposit taker has contravened, may have contravened, or is likely to contravene a prudential obligation.
- (2) The Bank may, by notice (a **remedial notice**), require the deposit taker—
 - (a) to take specified actions within a specified period—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur; or
 - (b) to give to the Bank a plan (a **remedial plan**).
- (3) The remedial plan must set out the following:
 - (a) actions that the deposit taker will take—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur:
 - (b) an appropriate timetable for taking the proposed actions to ensure that they are taken as soon as practicable:
 - (c) steps that the deposit taker will take to keep the plan current:
 - (d) any other matters required by the remedial notice.
- (4) The deposit taker must comply with a remedial notice in the manner specified in the notice.

120 Bank's consideration of remedial plan

- (1) If a licensed deposit taker gives a remedial plan to the Bank, the Bank may—
 - (a) approve the remedial plan; or
 - (b) require the deposit taker to amend the remedial plan and resubmit it to the Bank by a specified date for approval or rejection; or
 - (c) reject the remedial plan.
- (2) Nothing in this section limits the Bank's power to issue a further remedial notice under section 119(2)(a).

121 Bank may require amendment of remedial plan

- (1) The Bank may at any time require the licensed deposit taker to amend a remedial plan that has been approved by the Bank.
- (2) If the Bank acts under subsection (1) or section 120(1)(b), the licensed deposit taker must, within the period and otherwise in the manner specified by the Bank, give to the Bank an amended remedial plan that addresses the matter required to be amended.

122 Remedial plan may also be amended with Bank's approval

- (1) A licensed deposit taker may also, at any time, amend a remedial plan that has been approved by the Bank, but only with the Bank's approval.
- (2) This section does not limit section 121.

123 Licensed deposit taker must comply with remedial plan

If the Bank approves a remedial plan (whether as first provided or after amendment), the licensed deposit taker must take all reasonable steps to comply with the remedial plan.

124 Other provisions relating to remedial notices and plans

- (1) Neither a remedial notice nor a remedial plan may require the licensed deposit taker to pay compensation.
- (2) A remedial notice must set out the reasons for which it is given.

125 Offence to contravene remedial notice, fail to give amended remedial plan, or fail to take steps to comply with remedial plan

A licensed deposit taker that intentionally or recklessly contravenes section 119, 121, or 123 commits an offence and is liable on conviction to a fine not exceeding \$2,500,000.

Subpart 5—Investigations

126 Bank may appoint investigator

- (1) This section applies if the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (a) a deposit taker or other person has failed to comply with subpart 1 of Part 2 (requirements to be licensed and not to hold out);
 - (b) a licensed deposit taker or other person has contravened, is contravening, or is likely to contravene a prudential obligation;
 - (c) a licensed deposit taker has been or is operating fraudulently or recklessly.
- (2) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may

appoint, in writing, a person (an **investigator**) to carry out an investigation of the affairs of a person referred to in subsection (1).

- (3) The investigator must be an employee of the Bank or any other person who the Bank is satisfied is suitably qualified.
- (4) This subpart does not limit the Bank's information-gathering powers under subpart 1 of this Part.

127 Power to obtain information

- (1) An investigator may, for the purposes of carrying out an investigation of the affairs of a person (**A**) referred to in section 126(1), do 1 or more of the following:
 - (a) by notice, require **A**, or any director or employee of **A**, or any other person, to—
 - (i) give any information, or class of information, relating to the business, operation, or management of **A**; or
 - (ii) produce for inspection any documents, or class of documents, of or relating to the business, operation, or management of **A** that are in the custody or under the control of **A** or the director, employee, or other person; or
 - (iii) if necessary, reproduce, or assist in reproducing, in usable form, any information recorded or stored in those documents:
 - (b) take copies of any documents produced for inspection under paragraph (a):
 - (c) require any director or employee of **A**, or any other person, to answer any question relating to the business, operation, or management of **A**.
- (2) Any questioning under subsection (1)(c) may be carried out by the investigator, or a lawyer acting on behalf of the investigator, who may require the person who is subject to the questioning to take an oath or make an affirmation.
- (3) An investigator who exercises any powers under this section must, if requested, produce the instrument of the investigator's appointment.

128 Power to enter and search place, vehicle, or other thing

- (1) An investigator may, for the purposes of carrying out an investigation of the affairs of a person (**A**) referred to in section 126(1), enter and search any place, vehicle, or other thing if—
 - (a) the occupier of the place consents or the person in charge of the vehicle or thing consents; or
 - (b) the investigator obtains a warrant under this section.
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made by an investigator in the manner provided in subpart 3 of Part 4 of that Act, is satisfied that there are reasonable

grounds for believing that 1 or more of the following apply may issue a warrant to the investigator:

- (a) A has contravened, is contravening, or is likely to contravene a prudential obligation:
 - (b) it is necessary or desirable for the purpose of determining whether to exercise any powers conferred on the Bank under this Act that an investigation of the affairs of A should be carried out.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply.

129 Offences in relation to investigations

- (1) A person commits an offence if they, without reasonable excuse,—
- (a) hinder, obstruct, or delay an investigator in carrying out an investigation under this subpart; or
 - (b) contravene a requirement of a notice given under section 127; or
 - (c) refuse to answer any question put to them under section 127 or to take an oath or make an affirmation when required to do so under that section.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$100,000;
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Subpart 6—Confidentiality orders

130 Bank may make confidentiality order

- (1) The Bank may make an order prohibiting the publication or communication of any information—
- (a) that discloses, or is reasonably likely to disclose, the exercise of a power under this Act; or
 - (b) that is provided or obtained in connection with any inquiry, investigation, or other proceeding of the Bank under this Act.
- (2) The Bank may make the order on its own initiative or on the application of any person.
- (3) The Bank may make the order on the terms and conditions (if any) that it thinks fit.
- (4) The prohibition in the order has effect for the period specified in the order (which must not exceed 3 years).
- (5) At the end of the period specified in the order, the Official Information Act 1982 and the Privacy Act 2020 apply to any information that was the subject of the order.

- (6) An order made under this section is subject to any other legislation or an order of the court.

131 Disclosure with Bank's consent

- (1) A confidentiality order does not prohibit the disclosure of any information by a person if the disclosure is with the Bank's consent.
- (2) The Bank's consent must not be unreasonably withheld.
- (3) It is reasonable for the Bank to withhold its consent if it considers that the disclosure of the information would be likely to—
- (a) prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of any prudential obligations; or
 - (b) unreasonably prejudice the commercial position of a deposit taker; or
 - (c) be inconsistent with the purposes of this Act.
- (4) Subsection (3) does not limit the circumstances in which it may be reasonable for the Bank to withhold its consent.

132 Offence to contravene confidentiality order

- (1) A person commits an offence if they—
- (a) publish or communicate information in contravention of a confidentiality order; and
 - (b) know that, or are reckless as to whether, publishing or communicating the information contravenes a confidentiality order.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Subpart 7—Power to require warning to be disclosed

133 Bank may require its warning to be disclosed

- (1) This section applies if—
- (a) the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (i) a licensed deposit taker or other person has contravened, is contravening, or is likely to contravene a prudential obligation:
 - (ii) a licensed deposit taker has been or is operating fraudulently or recklessly; and
 - (b) the Bank has issued a warning to the licensed deposit taker or other person (A) about the matter referred to in paragraph (a).

- (2) The Bank may, by notice given to A, order A, or all or any associated persons of A, or both to do 1 or more of the following:
- (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of A or any of those associated persons;
 - (b) ensure that every communication of the kind that is specified in the order and that is distributed by or on behalf of A or any of those associated persons contains a copy of the warning in a prominent position or is accompanied by a copy of the warning;
 - (c) ensure that any document of the kind that is specified in the order and that is required by any relevant legislation to be given by A, or any of those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning.
- (3) In this section, **relevant legislation** means any of the following:
- (a) prudential legislation;
 - (b) financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011;
 - (c) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and any regulations made under that Act.

134 Procedural matters relating to order

The Bank may make an order under this subpart only if—

- (a) the Bank gives A at least 3 working days' notice of the following matters before the Bank exercises the power:
 - (i) that the Bank may make an order; and
 - (ii) the reasons why it is considering exercising that power; and
- (b) the Bank gives A or A's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

135 Other provisions relating to order

- (1) The Bank may make an order under this subpart on the terms and conditions (if any) that it thinks fit.
- (2) If the order extends to associated persons of A, the order may require—
 - (a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and
 - (b) A to provide a copy of the order to all or any of those associated persons.
- (3) For the purpose of subsection (2), the order is not required to refer to the associated persons by name.

136 Bank must give notice of orders

If the Bank makes an order under this subpart,—

- (a) it must, immediately after exercising the power, give notice on the Bank's Internet site of—
 - (i) the reasons for making the order; and
 - (ii) the terms and conditions of the order (if any); and
 - (iii) any other information the Bank thinks relevant in the circumstances; and
- (b) it may give public notice by any other means of the matters in paragraph (a); and
- (c) it may notify any other person of the matters in paragraph (a).

137 Offence to fail to comply with order

- (1) A person to whom an order under this subpart applies commits an offence if the person refuses or fails, without reasonable excuse, to comply with the order.
- (2) A person who commits an offence against this section is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

Subpart 8—Access to information by overseas supervisor**138 Access to information by overseas supervisor**

- (1) For the purpose of an overseas supervisor's performance or exercise of its supervisory functions, powers, or duties, the Bank may authorise the overseas supervisor to do either or both of the following:
 - (a) conduct an on-site inspection of a licensed deposit taker;
 - (b) require any licensed deposit taker to give to the overseas supervisor any information relating to that person.
- (2) An authorisation may be—
 - (a) granted for the period or periods that the Bank thinks fit; and
 - (b) varied, revoked, or amended by the Bank.
- (3) This subpart has effect despite anything to the contrary in any other legislation or rule of law.

139 Bank must give notice of authorisation

The Bank must give notice to a licensed deposit taker if the Bank—

- (a) grants an authorisation in relation to that person; or

- (b) varies, revokes, or amends that authorisation.

140 Authorisation may relate to particular customer or client

The information that an overseas supervisor may be authorised to obtain under this subpart may include, without limitation, information about the affairs of a particular customer or client of the licensed deposit taker.

141 Restriction on authorisation

The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information obtained or required by the overseas supervisor.

142 Duties of licensed deposit taker

A licensed deposit taker that is given a notice under section 139 must comply with the notice by, as the case may be,—

- (a) permitting the overseas supervisor to conduct an on-site inspection of the deposit taker; or
- (b) giving the overseas supervisor the required information within the period, and in the manner, specified in the notice.

143 Offence to contravene duties

A licensed deposit taker that, without reasonable excuse, contravenes section 142 commits an offence and is liable on conviction to a fine not exceeding \$500,000.

Subpart 9—Miscellaneous

144 Privilege against self-incrimination no excuse

A person is not excused from answering any question, giving any information, reproducing or assisting in reproducing any information, or producing any document under this Part on the ground that to do so would or might incriminate or tend to incriminate that person.

Compare: 1989 No 157 s 175A

145 Admissibility of self-incriminating statements

- (1) A self-incriminating statement made orally by a person (whether or not the statement is recorded in writing) in the course of answering any question, giving any information, reproducing or assisting in reproducing any information, or producing any document under this Part may be used in evidence against that person only in a prosecution for any offence where the person gives evidence inconsistent with the statement.
- (2) Despite subsection (1), any statement made in relation to—

- (a) a refusal or failure to answer any question, give any information, reproduce or assist in reproducing any information, produce any document, or comply with any other requirement may be used in evidence against that person in a prosecution for any offence under this Act arising from the refusal or failure:
- (b) the answering of any question in a way that is false or misleading in a material particular, or the giving of any information, the reproduction or assistance in reproduction of any information, or the production of any document that is false or misleading in a material particular, may be used in evidence against that person in a prosecution for any offence under this Act arising from that act.

Compare: 1989 No 157 s 175B

146 Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by a relevant section, until a final decision in relation to the proceeding is given,—
 - (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
 - (b) no person is excused from fulfilling their obligations under that section by reason of the proceeding.
- (2) However, an interim order may be made by the court overriding the effect of subsection (1), but only if the court is satisfied that—
 - (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
 - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in subsection (3), or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of that order do not unduly hinder or restrict the Bank or an investigator in performing or exercising any functions, powers, or duties under this Act or any provision of the prudential legislation.
- (3) The remedies are as follows:
 - (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:

- (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.
- (4) In this section and section 147, **relevant section** means section 99 or 127.

147 Effect of final decision that exercise of powers under section 99 or 127 unlawful

- (1) In any case where it is declared in a final decision given in a proceeding in respect of the exercise or purported exercise of powers conferred by a relevant section that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,—
 - (a) the Bank or an investigator must ensure that, as soon as is reasonably practicable after the decision of the court is given,—
 - (i) any information supplied by a person under the relevant section is destroyed:
 - (ii) any documents or extracts from documents obtained as a consequence of an inspection made under the relevant section are returned to the person who previously had possession of those documents or previously had them under their control, and any copies of those documents or extracts are destroyed:
 - (iii) any information derived from or based upon any such information or documents or extracts is destroyed:
 - (b) no information supplied by a person under, or purportedly under, a relevant section, and no documents or extracts from documents obtained under, or purportedly under, a relevant section,—
 - (i) are admissible in evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (ii) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (iii) may be used in connection with the exercise of any power conferred on the Bank or an investigator unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.
- (2) However, the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the Bank or an investigator subject to any terms and conditions that the court imposes.

Part 5

Enforcement

Subpart 1—Power to accept undertakings

148 Bank may accept voluntary undertaking

The Bank may accept a written undertaking from a licensed deposit taker or other person about a matter in relation to which the Bank is performing or exercising any of its functions, powers, or duties under this Act.

149 When undertaking is enforceable

An undertaking takes effect and becomes enforceable when the Bank's decision to accept the undertaking is given to the person who made the undertaking, or at any later time specified by the Bank.

150 What undertaking may include

An undertaking may include (without limitation) an undertaking from the deposit taker or person to—

- (a) pay compensation to any person; or
- (b) take specified action to address the cause, or to remedy or mitigate the consequences, of a contravention (or likely contravention) of a prudential obligation, or to ensure that the contravention does not occur or recur; or
- (c) pay an amount to the Bank in lieu of a pecuniary penalty.

151 Undertakings that include payment of money

If the undertaking includes the payment of an amount in lieu of a pecuniary penalty,—

- (a) the amount must be paid into a Crown Bank Account (after deducting the Bank's costs incurred in connection with the matter); and
- (b) the Bank must give notice of the payment on the Bank's Internet site, including—
 - (i) a statement of the amount to be paid; and
 - (ii) a brief description of the alleged contravention to which the undertaking relates.

152 Offence to contravene undertaking

- (1) A person must not contravene an undertaking given by that person that is in force.
- (2) A person that contravenes subsection (1) commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000:
- (b) in any other case, a fine not exceeding \$500,000.

153 Court may enforce undertaking

- (1) The Bank may apply to the court for an order under this section if the Bank is satisfied that a person has contravened an undertaking given by that person that is in force.
- (2) The court may make an order directing the person to do 1 or more of the following:
 - (a) comply with the undertaking:
 - (b) pay to the Crown an amount representing (wholly or partly) any financial benefit that the person has received because of the contravention of the undertaking:
 - (c) pay compensation to any person.
- (3) The order may include consequential directions.

154 Court must take into account certain matters

The court must, before making the order, take into account the following:

- (a) the nature and extent of the contravention of the undertaking:
- (b) the nature and extent of any loss or damage incurred by any person as a result of the contravention:
- (c) the circumstances in which the contravention occurred (including whether it was intentional, inadvertent, or caused by negligence):
- (d) any other matters the court considers relevant.

155 Proceedings for alleged contravention

- (1) No proceedings may be brought for a contravention or an alleged contravention of this Act or the regulations against—
 - (a) a person who made an undertaking in relation to that contravention or alleged contravention, while the undertaking is enforceable and there is no contravention of the undertaking:
 - (b) a person who made, and has completely discharged, an undertaking in relation to that contravention or alleged contravention.
- (2) The Bank may accept an undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention or alleged contravention have been completed.
- (3) If the Bank accepts an undertaking before the proceedings are completed, the Bank must take all reasonable steps to have the proceedings discontinued as soon as practicable (to the extent that the proceedings relate to that contravention or alleged contravention).

156 Licensed deposit taker or other person may withdraw or amend undertaking

A licensed deposit taker or other person may withdraw or amend an undertaking only with the Bank's consent.

Subpart 2—Pecuniary penalty*Court may make pecuniary penalty order***157 When court may make pecuniary penalty orders**

- (1) The court may, on the application of the Bank, order a person (A) to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that A has—
 - (a) contravened an applicable standard; or
 - (b) been involved in a contravention of an applicable standard; or
 - (c) contravened a condition of its licence; or
 - (d) contravened section 93 (directors' due diligence duty); or
 - (e) contravened section 94 (New Zealand chief executive officers' due diligence duty).
- (2) In this subpart,—
 - (a) **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty:
 - (b) a person is **involved in a contravention** of an applicable standard if the person—
 - (i) has aided, abetted, counselled, or procured the contravention; or
 - (ii) has induced, whether by threats or promises or otherwise, the contravention; or
 - (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (iv) has conspired with others to effect the contravention.

*Amount of pecuniary penalty***158 Maximum amount of pecuniary penalty**

- (1) The maximum amount of a pecuniary penalty that a body corporate may be ordered to pay for a contravention, or involvement in a contravention, of an applicable standard or a condition of a licence is the greater of—
 - (a) \$5,000,000; and
 - (b) 0.1% of the total assets of the body corporate and its subsidiaries (if any) as at the balance date of the accounting period that precedes the time at which the contravention first occurs (as specified in the body corporate's

financial statements or the group financial statements of the body corporate and those subsidiaries).

- (2) If the body corporate is an overseas person, the total assets must be calculated by reference to the total assets of the New Zealand business of the body corporate and its subsidiaries (if any) as specified in the financial statements or the group financial statements for that New Zealand business.
- (3) The maximum amount of a pecuniary penalty that an individual may be ordered to pay for a contravention of section 93 or 94, or involvement in a contravention of an applicable standard, is \$1,000,000.

159 Considerations for court

- (1) In determining whether to make an order, and the amount of any pecuniary penalty to be paid, the court must have regard to the following matters:
 - (a) the extent to which A's conduct undermines the purposes of this Act:
 - (b) any loss or damage caused by A's conduct:
 - (c) whether A has taken steps to avoid or mitigate any adverse effects arising from A's conduct:
 - (d) whether A's conduct was intentional or reckless:
 - (e) the circumstances of A's conduct:
 - (f) whether A has previously engaged in similar conduct:
 - (g) any other matters the court considers relevant.
- (2) In the case of a contravention of section 93 or 94, the court must also have regard to the guidance published under section 97.

Defences

160 Defences for person that contravenes prudential obligation

- (1) This section applies to a proceeding under this subpart against A for a contravention of an applicable standard or a condition of a licence.
- (2) It is a defence for A to prove that the contravention was due to reasonable reliance on information provided by another person, other than a director, an employee, or an agent of A.
- (3) It is also a defence for A to prove that—
 - (a) the contravention was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
 - (b) A took reasonable precautions and exercised due diligence to avoid the contravention.

- (4) A's conduct must still be treated as contravening an applicable standard or a condition of a licence even if the conduct does not lead to any liability under this subpart because of the availability of a defence.

161 Defence for person that is involved in contravention

- (1) This section applies if—
- (a) a person (**B**) has contravened an applicable standard; and
 - (b) another person (**C**) is involved in the contravention.
- (2) In a proceeding under this subpart against C for involvement in the contravention, it is a defence if C proves that—
- (a) C's involvement in the contravention was due to reasonable reliance on information supplied by another person, other than a director, an employee, or an agent of C; or
 - (b) C took all reasonable steps to ensure that B complied with the applicable standard.

Bank's costs

162 Court must order that recovery from pecuniary penalty be applied to Bank's actual costs

If the court orders a person to pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the Bank's actual costs in bringing the proceedings.

Procedural rules

163 Rules of civil procedure and civil standard of proof apply

The proceedings under this subpart are civil proceedings and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

164 Limitation

- (1) A proceeding under this subpart may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) However, no proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention.
- (3) Section 48(1) and (3) of the Limitation Act 2010 (which relates to fraud) applies with all necessary modifications to the 10-year period referred to in subsection (2) as if it were a longstop period.

Relationship between proceedings and orders

165 Only 1 pecuniary penalty order may be made for same conduct

If conduct by a person constitutes a contravention, or involvement in the contravention, of 2 or more obligations, proceedings may be brought against that person for the contravention, or involvement in the contravention, of any 1 or more of the obligations, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

166 No pecuniary penalty and criminal penalty for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine or to imprisonment under this Act or any other Act for the same conduct.

167 Relationship between concurrent pecuniary penalty proceeding and criminal proceeding

- (1) A criminal proceeding for an offence may be commenced against a person in relation to particular conduct whether or not a proceeding under this subpart has been commenced against the person in relation to the same conduct.
- (2) A proceeding under this subpart against a person in relation to particular conduct is stayed (unless the court orders otherwise) if a criminal proceeding against the person has been commenced for an offence in relation to the same conduct.
- (3) After the criminal proceeding referred to in subsection (2) has been completed or withdrawn, a person may apply to have the stay lifted on the pecuniary penalty proceeding.

Subpart 3—Infringement offences

168 Infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
 - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under section 169.
- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

169 When infringement notice may be issued

The Bank may issue an infringement notice to a person if the Bank believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

170 Revocation of infringement notice before payment made

- (1) The Bank may revoke an infringement notice before—
 - (a) the infringement fee is paid; or
 - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Bank must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in section 168(1)(a) or (b) against the person to whom the notice was issued in respect of the same matter.

171 What infringement notice must contain

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence;
- (b) the amount of the infringement fee;
- (c) the address of the Bank;
- (d) how the infringement fee may be paid;
- (e) the time within which the infringement fee must be paid;
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
- (g) a statement that the person served with the notice has a right to request a hearing;
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
- (i) any other matters prescribed in the regulations.

172 How infringement notice may be served

- (1) An infringement notice may be served on the person who the Bank believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) if the person is a body corporate, delivering it to a director or an employee of the body corporate at its head office, principal place of

- business or work, or registered office, or by bringing it to the director's notice or the employee's notice if that person refuses to accept it; or
- (e) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (f) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) If the person is a body corporate,—
- (a) subsection (1)(a) to (c) does not apply (but *see* subsection (1)(d) instead); and
 - (b) the infringement notice (or a copy of it) sent in accordance with subsection (1)(e) or (f) must be sent for the attention of a director or employee of the body corporate.
- (3) Unless the contrary is shown,—
- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under subsection (1) is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Bank.

173 Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account.

174 Reminder notices

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice.

Subpart 4—False or misleading declarations, representations, and other information

175 False or misleading declarations, representations, or other information

- (1) A person (A) commits an offence if, for any purpose relating to this Act,—
- (a) A makes a declaration or representation to the Bank or an investigator and A knows that, or is reckless as to whether, the declaration or representation is false or misleading in any material particular; or
 - (b) A gives to the Bank or an investigator any information and A knows that, or is reckless as to whether, the information is false or misleading in any material particular; or

- (c) A gives to the Bank or an investigator a document that is not genuine and A knows that, or is reckless as to whether, the document is not genuine; or
 - (d) A otherwise publishes or makes available any information and A knows that, or is reckless as to whether, the information is false or misleading in any material particular.
- (2) Subsection (1) applies whether A acts on A's own behalf or on behalf of any other person.
- (3) Subsection (1)(a) applies whether A makes the declaration or representation orally or in writing.
- (4) A person that commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in any other case, to a fine not exceeding \$2,500,000.

176 Liability of directors if licensed deposit taker or associated person commits offence

If a licensed deposit taker or an associated person is convicted of an offence against section 175, every director of the deposit taker or associated person is guilty of the offence if it is proved—

- (a) that the act that constituted the offence took place with the director's authority, permission, or consent; and
- (b) that the director—
 - (i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) failed to take all reasonable steps to prevent or stop it.

Subpart 5—Ban ordered by District Court

177 Power to ban certain persons from participating in deposit-taking business

- (1) The District Court may, on the application of the Bank, make an order in respect of a person under this subpart if the court considers that the person—
- (a) has engaged in an act, an omission, or a course of conduct that constitutes serious wrongdoing and that the person is not a fit and proper person to participate in a deposit-taking business in 1 or more of the ways described in section 178; or
 - (b) has failed to comply with an order under section 29; or
 - (c) as a director of a licensed deposit taker, has persistently or seriously failed to comply with section 93 (directors' due diligence duty); or

- (d) as a New Zealand chief executive officer of an overseas licensed deposit taker, has persistently or seriously failed to comply with section 94 (New Zealand chief executive officers' due diligence duty); or
 - (e) is a director of a licensed deposit taker that has persistently or seriously contravened any prudential obligation, and the person has persistently failed to take reasonable steps to prevent or stop the deposit taker's contravention; or
 - (f) is prohibited from participating in a deposit-taking business in 1 or more of the ways specified in section 178 under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand.
- (2) Every application to the court under this section must be made by an originating application.

178 Type of order

- (1) The order is an order banning a person from being or doing 1 or more of the following:
- (a) being a director of a licensed deposit taker or of any other member of a licensed deposit taker group:
 - (b) being concerned or taking part in the management of a licensed deposit taker or of any other member of a licensed deposit taker group:
 - (c) being a shareholder of a licensed deposit taker or of any other member of a licensed deposit taker group:
 - (d) being an employee or other agent of a licensed deposit taker or of any other member of a licensed deposit taker group:
 - (e) acting under a contract for services with a licensed deposit taker or with any other member of a licensed deposit taker group:
 - (f) otherwise participating in a business of a licensed deposit taker or of any other member of a licensed deposit taker group in any other way (whether paid or unpaid).
- (2) An order may relate to any of the following:
- (a) all licensed deposit takers, a particular licensed deposit taker, or a class of licensed deposit takers:
 - (b) all members of licensed deposit taker groups, a particular member of a licensed deposit taker group, or a class of those members.

179 Other provisions relating to order

- (1) An order may be—
- (a) made even though the person concerned may be criminally or civilly liable for the matters on the grounds of which the order is to be made; and

- (b) permanent or for a specified time; and
 - (c) subject to the terms and conditions that the court thinks fit; and
 - (d) cancelled or varied at any time by the court (on the application of the Bank or of the person who is the subject of the order).
- (2) The court may make any order in the matter as to costs and otherwise as it thinks fit.
- (3) As soon as practicable after an order is made, the Registrar of the court must send a copy of the order to the Bank.

180 Offence to contravene banning order

A person who intentionally or recklessly contravenes an order made under this subpart commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

181 Effect of appeal

A ban under this subpart has effect from the date specified in the order even though an appeal may have been lodged under section 182.

182 Appeal to High Court

The Bank or a person to whom an order relates may appeal to the High Court against a decision of the District Court under this subpart.

Subpart 6—Miscellaneous

Attribution of liability

183 State of mind of directors, employees, or agents attributed to body corporate or other principal

- (1) If, in a proceeding under this Act in respect of any relevant conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority, had that state of mind.
- (2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any relevant conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of their actual or apparent authority, had that state of mind.
- (3) In this section,—
- relevant conduct** means conduct in relation to which any provision of this Act applies

state of mind, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Compare: 1986 No 5 s 90(1), (3), (5)

184 Conduct of directors, employees, or agents attributed to body corporate or other principal

- (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:
 - (a) a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.
- (2) Conduct engaged in on behalf of a person other than a body corporate (**A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:
 - (a) an employee or agent of A acting within the scope of their actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Compare: 1986 No 5 s 90(2), (4)

Miscellaneous

185 General defence for offences

- (1) This section applies to offences against any of sections 27, 33, 36, 51, 60, 100, 104, 106, 114, 117, 129, 137, 143, 258, 273, 345, 388, 402, 406, 418, 426, 435, and 437.
- (2) It is a defence to a prosecution for an offence referred to in subsection (1) if the defendant (**A**) proves that—
 - (a) the contravention to which the offence relates was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
 - (b) A took reasonable precautions and exercised due diligence to avoid the contravention.

186 Time for filing charging document for certain offences

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 3 years after the date on which the offence was committed.
- (2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.
- (3) In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

187 Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine court proceedings in New Zealand under this Act, other than proceedings—

- (a) for offences; or
- (b) under subpart 5; or
- (c) under section 197(4); or
- (d) under section 206; or
- (e) under section 393; or
- (f) under section 474.

188 Orders to secure compliance

The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

189 General provisions as to court's orders

- (1) A court order under this Act may be made on the terms and conditions the court thinks fit.
- (2) The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

Part 6**Depositor compensation scheme****Subpart 1—Preliminary provisions****190 Additional purpose of this Part**

- (1) The purpose of this Part is to contribute towards protecting and promoting the stability of New Zealand's financial system by—
 - (a) protecting eligible depositors to the extent that they are covered by the depositor compensation scheme; and

- (b) allowing the Depositor Compensation Fund to be used to support a resolution measure undertaken in relation to a licensed deposit taker.
- (2) This section does not limit section 3.

191 Interpretation in this Part

- (1) In this Part, unless the context otherwise requires,—

eligible depositor—

- (a) means a holder of a protected deposit or a person on whose behalf a protected deposit is held (whether or not the debt security was issued to, or subsequently acquired by, the holder of the security); but
- (b) does not include any of the following:
 - (i) a licensed deposit taker, a licensed insurer, or an operator of a designated FMI:
 - (ii) a bank or other entity that is licensed, registered, or otherwise authorised to accept deposits under the law of an overseas jurisdiction:
 - (iii) a government agency:
 - (iv) in relation to a specified event notice issued in relation to a licensed deposit taker (**B**),—
 - (A) an associated person of B; or
 - (B) a director of B:
 - (v) a person of a class that is prescribed by the regulations

fund means the Depositor Compensation Fund established under section 196

government agency means any of the following:

- (a) the Crown (as defined in section 2(1) of the Public Finance Act 1989):
- (b) an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989):
- (c) a Crown entity under section 7(1)(a) to (c) of the Crown Entities Act 2004:
- (d) a local authority (as defined in section 5(1) of the Local Government Act 2002):
- (e) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986):
- (f) the Bank or a subsidiary of the Bank:
- (g) a company or other organisation named or described in Schedule 4 or 4A of the Public Finance Act 1989:

- (h) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990 (and any company appointed under clause 3(1)(b) of Schedule 4 of that Act)

person—

- (a) has the same meaning as in section 13 of the Legislation Act 2019; and
- (b) includes—
- (i) a partnership under the Partnership Law Act 2019 (*see* section 207); and
 - (ii) in the case of a trust to which section 209 applies that has only 1 trustee, the trustee acting in their capacity as trustee; and
 - (iii) in the case of a trust to which section 209 applies that has more than 1 trustee, the trustees acting jointly in their capacity as trustees

quantification time, in relation to a specified event notice, means the time specified in the notice under section 194(3)

relevant arrangement has the meaning set out in subsection (2)

resolution measure has the meaning set out in section 230(3)

scheme means the depositor compensation scheme established by this Part

specified event notice means a notice issued under section 194

statement of funding approach means the statement of funding approach published under subpart 7.

- (2) A protected deposit is held under a **relevant arrangement** if the deposit—
- (a) is held under a regulated client money or property service (within the meaning of section 431W of the FMCA); or
 - (b) is held under a trust, a scheme, or other arrangement of a kind that is prescribed by the regulations.
- (3) In this Part, a protected deposit must be treated as being held for, or on behalf of, 1 or more persons if—
- (a) a trust, a scheme, or other arrangement of a particular kind is prescribed by the regulations for the purposes of subsection (2)(b); and
 - (b) the regulations declare that a deposit held under a trust, scheme, or arrangement of that kind must be treated as being held for, or on behalf of, those persons.

Example

A managed investment scheme that is managed by a bank (**A**) is a multi-rate PIE (as defined in section YA 1 of the Income Tax Act 2007). The scheme only invests in protected deposits issued by A. An investor who holds interests in the scheme may use their investment in a similar way to a normal term deposit or call deposit.

If the regulations prescribe schemes of that kind for the purposes of subsection (2)(b), the regulations may also declare that the protected deposits are to be treated as being held for, or on behalf of, the investors who hold interests in the scheme.

192 Meaning of protected deposit and related terms

- (1) In this Act, **protected deposit** means a debt security issued by a licensed deposit taker (**B**) if—
- (a) payments of the principal and interest are only in—
 - (i) New Zealand currency; or
 - (ii) a currency of a kind that is prescribed by the regulations (if any); and
 - (b) the terms of the debt security are governed by New Zealand law; and
 - (c) either or both of the following apply:
 - (i) the requirements prescribed by the regulations for the purposes of this paragraph are satisfied;
 - (ii) the debt security is of a kind that is specified by the regulations for the purposes of this paragraph.
- (2) However, **protected deposit** does not include any of the following:
- (a) a debt security that is issued out of, or administered by, an overseas office or branch of a licensed deposit taker:

Guidance note

See section 86, which allows standards to provide for the identification of a debt security as being issued out of, or administered by, an overseas office or branch of a licensed deposit taker or a New Zealand office or branch of that deposit taker.

 - (b) a redeemable share (other than a redeemable share issued by a credit union, a friendly society, a co-operative company, or a building society):
 - (c) a debt security issued by a licensed deposit taker of a kind that is specified in the regulations for the purposes of this paragraph:
 - (d) a debt security that is declared by the regulations not to be a protected deposit.
- (3) The amount of the protected deposit at a particular time is—
- (a) the principal to be repaid under the debt security as at that time; and
 - (b) accrued interest for the debt security as at that time, if any (*see* section 218).

193 Licensed deposit taker must publish list of protected deposits

- (1) A licensed deposit taker must ensure that an Internet site that is maintained by, or on behalf of, the deposit taker—

- (a) identifies clearly and prominently all classes of debt securities issued by the deposit taker that are protected deposits; or
 - (b) contains a prominent link to another Internet site that clearly and prominently contains that information.
- (2) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
- (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.
- (3) In this section, debt securities are of the same **class** if those debt securities have attached to them identical rights, privileges, limitations, and conditions, except that they may have a different redemption date or interest rate or both.

194 When Bank may issue specified event notice

- (1) The Bank may issue a specified event notice in relation to a licensed deposit taker (**B**) if—
- (a) 1 or more of the following apply:
 - (i) B is put into liquidation under New Zealand law;
 - (ii) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of B and the Receiverships Act 1993 applies to the receivership;
 - (iii) B has entered resolution; and
 - (b) the Bank is satisfied that—
 - (i) B's financial or other difficulties are likely to cause serious and prolonged disruption to the ability of eligible depositors to deal with their protected deposits in accordance with their applicable terms and conditions; and
 - (ii) issuing the notice is the most appropriate means to deal with that disruption.
- (2) The Bank must publish the notice in the *Gazette*.
- (3) The notice must specify a quantification time that the Bank thinks fit.
- (4) However, the quantification time must be no earlier than the time of the event referred to in subsection (1)(a)(i), (ii), or (iii).

195 Bank's function under this Part

The Bank's function under this Part is to manage and administer the scheme, including—

- (a) deciding whether a notice should be issued under section 194; and
- (b) determining entitlements to compensation under this Part; and

- (c) ensuring that compensation under this Part is provided as soon as practicable after the Bank issues a specified event notice; and
- (d) exercising rights of subrogation under subpart 4; and
- (e) paying money out of the fund under subpart 5 for the purposes of supporting a resolution measure undertaken in relation to a licensed deposit taker; and
- (f) collecting the levies and interest payable under subpart 6; and
- (g) administering, operating, and investing the fund; and
- (h) monitoring risks in connection with the scheme; and
- (i) providing, or facilitating the provision of, information to the public in connection with the scheme; and
- (j) performing and exercising the functions, powers, and duties conferred or imposed on it by or under this Part.

Subpart 2—Depositor Compensation Fund

196 Depositor Compensation Fund established

This section establishes the Depositor Compensation Fund (the **fund**).

197 Fund owned and managed on behalf of Crown

- (1) All property of the fund is owned by the Bank on behalf of the Crown.
- (2) For the purposes of this Part, the Bank is not a trustee, or a constructive trustee, in relation to the performance of its functions or any other matter.
- (3) The fund is managed by the Bank on behalf of the Crown.
- (4) All money owing in respect of the fund is recoverable in a court of competent jurisdiction as a debt due to the Bank.

198 What fund consists of

The fund consists of—

- (a) all levies and interest collected under subpart 6:
- (b) fund investments:
- (c) money accruing from the investment of the fund:
- (d) money accruing from the exercise of the rights of subrogation under subpart 4:
- (e) money provided under subpart 8:
- (f) any other money that may be lawfully payable into the fund.

199 Payments out of fund

Money may be paid out of the fund—

- (a) to pay for the Bank performing or exercising its functions, powers, or duties under this Part, including—
 - (i) paying compensation under subpart 3; and
 - (ii) paying the Bank's expenditure incurred in connection with providing, or facilitating the provision of, information to the public in connection with the scheme; and
 - (iii) paying all expenditure incurred by the Bank in connection with the Bank performing or exercising its functions, powers, or duties under this Part; and
- (b) to support a resolution measure undertaken in relation to a licensed deposit taker under subpart 5; and
- (c) to pay the taxation liabilities arising in respect of the fund; and
- (d) to pay the costs of the Crown in connection with the Minister performing, or preparing to perform, the Minister's duties under subpart 8 (for example, the costs incurred in holding additional liquidity in preparation for performing those duties); and
- (e) to repay any money provided to the fund under subpart 8, and to pay any interest or fees, charges, or costs in connection with the provision of the money.

200 Bank may apportion expenditure

- (1) This section applies if the Bank reasonably considers that expenditure is related to both—
 - (a) the Bank performing or exercising its functions, powers, or duties under this Part; and
 - (b) the Bank performing or exercising any other functions, powers, or duties.
- (2) The Bank may apportion the expenditure in the manner that the Bank thinks fit so as to determine the part of the expenditure that is to be met out of the fund under section 199(a).
- (3) The part of the expenditure determined in relation to the fund must be treated as expenditure under section 199(a).

201 Investments

- (1) The Bank may invest all or any money received by it in respect of the fund that is not immediately required for expenditure.
- (2) The Bank must comply with the requirements for the investment of the fund that are contained in the statement of funding approach.
- (3) This section does not limit subpart 5.

- (4) Section 113 of the Reserve Bank of New Zealand Act 2021 does not apply to an investment made under this section.

Subpart 3—Entitlement to compensation

Entitlement rules

202 General entitlement rule

- (1) A person (**A**) is entitled, in respect of 1 or more protected deposits placed with a licensed deposit taker (**B**), to compensation from the fund if—
- (a) the Bank has issued a specified event notice in relation to B; and
 - (b) A is an eligible depositor; and
 - (c) the deposits are placed with B at the quantification time; and
 - (d) 1 or more of the following apply in respect of each of the deposits:
 - (i) A holds the deposit in A's own right (and no other person holds the deposit):
 - (ii) A holds the deposit in A's own right jointly with 1 or more other persons:
 - (iii) A holds the deposit in A's own right with 1 or more other persons other than jointly:
 - (iv) the deposit is held for, or on behalf of, A (and no other person) under a relevant arrangement:
 - (v) the deposit is held for, or on behalf of, A and 1 or more other persons under 1 or more relevant arrangements.
- (2) The compensation to which A is entitled is the amount that is calculated by the Bank under this Part and in the manner prescribed by the regulations.
- (3) *See* section 209, which provides that references in this section to a person holding a deposit in their own right may be treated as including a trustee or trustees holding a deposit on trust.
- (4) This section and sections 203 to 210 are subject to the regulations referred to in sections 212 to 215.

203 Calculation of entitlement

- (1) The compensation that an eligible depositor (**A**) referred to in section 202 is entitled to under this Part is the lesser of the following:
- (a) the total amount of the following as at the quantification time:
 - (i) A's protected deposits falling within section 202(1)(d)(i) and (iv); and

- (ii) A's share of the protected deposits falling within section 202(1)(d)(ii), (iii), and (v) (*see* sections 204 to 206 for rules about how to determine A's share):

- (b) \$100,000 or a temporary high balance limit (if any).

Example

Bank B goes into liquidation.

A holds a deposit of \$60,000 with B.

A and A's spouse jointly hold 2 other deposits with B worth \$40,000 and \$50,000. A's share of those deposits under section 204 is \$45,000 (an equal share of \$90,000).

The total amount under subsection (1)(a) is \$105,000 (\$60,000 plus \$45,000).

This exceeds the \$100,000 coverage limit. Therefore, A is only entitled to compensation of \$100,000 on B's liquidation.

- (2) A limit in subsection (1)(b) applies regardless of the number or amount of deposits.
- (3) In this section, **temporary high balance limit** means a limit (which is greater than \$100,000) that—
 - (a) is prescribed by, or determined in accordance with, the regulations; and
 - (b) applies to A in accordance with the regulations.

204 Protected deposit held by or on behalf of 2 or more persons jointly

- (1) This section applies if a protected deposit is held—
 - (a) by 2 or more persons in their own right jointly; or
 - (b) for, or on behalf of, 2 or more persons jointly under 1 or more relevant arrangements.
- (2) For the purposes of this Part,—
 - (a) each of the persons must be treated as having—
 - (i) an equal share in the protected deposit (unless subparagraph (ii) applies); or
 - (ii) the share in the protected deposit that is specified in records that are maintained by the licensed deposit taker, or provided by the holder of the protected deposit, in the manner prescribed by the regulations; and
 - (b) a person's share in the protected deposit must be taken into account in calculating their entitlement (if any) to compensation under section 203 (except to the extent that the regulations provide otherwise).
- (3) Subsection (2) applies whether or not each person is an eligible depositor (but a person who is not an eligible depositor is not eligible to compensation in respect of their share).

- (4) This section does not affect the rights of those persons as between themselves.

205 Protected deposit held by or on behalf of 2 or more persons other than jointly

- (1) This section—
- (a) applies if a protected deposit is held—
- (i) by 2 or more persons in their own right; or
 - (ii) for, or on behalf of, 2 or more persons under 1 or more relevant arrangements; but
- (b) does not apply if section 204 applies.

Example

A protected deposit is held in a law firm's trust account for, or on behalf of, 200 clients.

The deposit is not held on behalf of those clients jointly. Accordingly, section 204 does not apply.

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- (2) For the purposes of this Part,—
- (a) each of the persons must be treated as having—
- (i) the share in the protected deposit that is specified in records that are maintained by the relevant person in the manner prescribed by the regulations; or
 - (ii) if such records are not maintained, the share in the protected deposit that is notified by the relevant person in the manner prescribed by the regulations; and
- (b) a person's share in the protected deposit must be taken into account in calculating their entitlement (if any) to compensation under section 203 (except to the extent that the regulations provide otherwise).
- (3) Subsection (2) applies whether or not each person is an eligible depositor (but a person who is not an eligible depositor is not eligible to compensation in respect of their share).
- (4) This section does not affect the rights of those persons as between themselves.
- (5) In this section, **relevant person** means, in the case of a deposit held—
- (a) by 2 or more persons in their own right, those persons acting together;
 - (b) under 1 or more relevant arrangements, a person of the kind that is prescribed in the regulations.

206 District Court may make order about shares

- (1) This section applies if—
- (a) section 205 applies; and

- (b) a person referred to in section 205(1)(a) applies for an order under this section; and
 - (c) the Bank has not yet paid any compensation under this subpart in respect of the protected deposit.
- (2) Despite section 205, the District Court may, if it thinks it is just and equitable to do so, make an order that, for the purposes of this Part, a protected deposit must be treated as being held by, for, or on behalf of—
 - (a) a particular person; or
 - (b) 1 or more persons in the shares that the court thinks fit.
- (3) A person's protected deposit, or share in a protected deposit, as specified in an order must be taken into account in calculating their entitlement (if any) to compensation under section 203 (except to the extent that the regulations provide otherwise).

207 Partnerships

- (1) For the purpose of entitlement to compensation from the fund, a partnership under the Partnership Law Act 2019 must be treated as being a person that is distinct from its partners.
- (2) Accordingly, if a protected deposit is held by, for, or on behalf of 2 or more partners for a partnership, the partners must not be treated as being 2 or more persons under section 204.

208 Providers of relevant arrangement not entitled to compensation

If a person (A) holds a protected deposit under a relevant arrangement for, or on behalf of, 1 or more other persons, the other person or persons (but not A) may be entitled to compensation under sections 202 and 203 in respect of the deposit.

209 Entitlement rule for deposits held on trust

- (1) This section applies if—
 - (a) 1 or more protected deposits are held—
 - (i) by 1 or more trustees under 1 trust; or
 - (ii) for, or on behalf, of 1 or more trustees under 1 trust; and
 - (b) the trust is not either of the following:
 - (i) a trust under a relevant arrangement:
 - (ii) a trust of a kind that is prescribed by the regulations.
- (2) For the purpose of entitlement to compensation from the fund,—
 - (a) the following must be treated as being the person (A) that holds the deposit (or for which, or on whose behalf, the deposit is held):

- (i) if the trust has only 1 trustee, the trustee acting in their capacity as trustee:
 - (ii) if the trust has more than 1 trustee, the trustees acting jointly in their capacity as trustees; and
 - (b) references to a person holding a deposit in their own right must be treated as including the trustee or trustees holding a deposit on trust.
- (3) Compensation that is paid under this Part in respect of the protected deposits held under the trust must be treated as being trust property.

Example

A bank (**B**) goes into liquidation.

The Smith Family Trust has 3 trustees: X, Y, and Z. The trust has 3 deposits with B: \$60,000, \$30,000, and \$20,000 (\$110,000 in total).

X, Y, and Z acting jointly in their capacity as trustees are treated under this Act as 1 person (**A**) that holds the deposits.

The total amount of the deposits is \$110,000.

This exceeds the \$100,000 coverage limit under section 203. Therefore, the trustees (on behalf of the trust) are only entitled to compensation of \$100,000 on B's liquidation.

The compensation is trust property.

The entitlement of the Smith Family Trust is separate from any entitlement that X, Y, or Z may have in their personal capacity (or in a capacity as a trustee for some other trust).

210 Protected deposit held under different trusts

- (1) If a protected deposit is held under different trusts, each portion of the deposit held under each of those trusts as at the quantification time must be treated as being a separate protected deposit for the purposes of calculating the entitlement to compensation in respect of each trust.
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Example

A deposit of \$150,000 is held for 2 trusts: the Smith Family Trust and the Jones Family Trust. Of that amount, \$90,000 is identified as being property of the Smith Family Trust while \$60,000 is identified as being property of the Jones Family Trust. Those amounts must be treated as separate deposits for the purposes of calculating entitlements to compensation for the respective trusts.

- (2) This section does not apply to a trust referred to in section 209(1)(b)(i) and (ii).

211 Trustee that is ineligible in own personal capacity does not prevent compensation being payable in relation to trust

- (1) A trustee or trustees acting in their capacity as trustees must be treated as being a person distinct from the trustee or trustees in their own personal capacity.

- (2) Accordingly, the fact that 1 or more trustees may not be eligible depositors in their own personal capacity does not prevent the trustee or trustees acting in their capacity as trustees from being an eligible depositor.

Entitlements subject to regulations

212 Regulations may provide for calculation of amount of person's protected deposits or share of protected deposits

- (1) For the purposes of this subpart, the regulations may provide for the calculation of the amount of a person's protected deposits or share of protected deposits, including by taking into account any benefit to which the person is entitled or that the person might (directly or indirectly) receive in connection with a protected deposit that is held in any 1 or more of the following ways:
- (a) by a trustee or trustees on trust:
 - (b) by a partnership or any other unincorporated body:
 - (c) by 2 or more persons jointly:
 - (d) by 2 or more persons other than jointly:
 - (e) by a person under a relevant arrangement (for example, under a custodial service referred to in section 431W of the FMCA).
- (2) Those regulations may authorise or require the Bank to treat any protected deposit held by—
- (a) a person as being held (in whole or in part) by—
 - (i) that person and 1 or more other persons in the shares determined under the regulations; or
 - (ii) another person; or
 - (iii) 2 or more other persons in the shares determined under the regulations:
 - (b) 2 or more persons jointly or other than jointly as being held (in whole or in part) by—
 - (i) 1 of those persons; or
 - (ii) 1 or more of those persons in the shares determined under the regulations; or
 - (iii) 1 or more of those persons and 1 or more other persons in the shares determined under the regulations; or
 - (iv) 1 or more other persons in the shares determined under the regulations.
- (3) If those regulations authorise or require the Bank to treat any protected deposit as being held (in whole or in part) by 2 or more persons, the regulations may also authorise or require the Bank to treat the protected deposit as being so held jointly or other than jointly.

- (4) Subsections (2) and (3) do not limit subsection (1).

213 Regulations may take into account transactions that have not been processed at quantification time

- (1) This section applies if,—
- (a) before the quantification time,—
 - (i) a transaction connected with a protected deposit is entered into and an instruction relating to the transaction has been received by the licensed deposit taker; but
 - (ii) the protected deposit has not yet been credited or debited to take into account the transaction; and
 - (b) the circumstances specified in the regulations (if any) apply.
- (2) For the purposes of this subpart, the regulations may provide for the calculation of the amount of a person's protected deposits or share of protected deposits to be increased or decreased to take into account the transaction.
- (3) The regulations may provide for the transaction to be taken into account in the prescribed manner.

214 Regulations may take into account funds that are withdrawn or available to eligible depositors during resolution

- (1) This section applies if—
- (a) the Bank issues a specified event notice in relation to a licensed deposit taker that has entered resolution; and
 - (b) during the whole or any part of the relevant period, all or any part of the principal or accrued interest to be repaid or paid under a protected deposit that is placed with the deposit taker is withdrawn, or is available to be withdrawn, by or on behalf of an eligible depositor; and
 - (c) the circumstances specified in the regulations (if any) apply.
- (2) For the purposes of this subpart, the regulations may provide for the calculation of the amount of compensation that a person is entitled to under this Part to take into account the matter referred to in subsection (1)(b).
- (3) The regulations may provide for the matter to be taken into account in the prescribed manner.
- (4) The **relevant period** is the period that—
- (a) is on and after the quantification time; but
 - (b) ends immediately before the time at which compensation is paid under this Part.

Example

A bank (**B**) goes into resolution.

The Bank issues a specified event notice in relation to B, which gives rise to an entitlement to compensation.

A customer (**A**) has a \$100,000 transactional account with B at the quantification time.

Under the resolution, A is given limited access to their account: A is permitted to withdraw up to \$90,000. A withdraws \$40,000 (whether in 1 transaction or multiple transactions). A continues to have available a further \$50,000 continuing up until the time at which the compensation is to be paid under this Part.

Under the ordinary entitlement rules, A is entitled to \$100,000 compensation.

However, the regulations may take into account the ongoing access to \$90,000 by providing for A to be entitled to \$10,000 compensation. This means that A will have received (or have available) a total of \$100,000 (the \$10,000 compensation, the \$40,000 that has been withdrawn, and the remaining \$50,000 that continues to be available). This puts A in the same position as if access to A's account had not been made available.

215 Regulations may impose conditions

- (1) For the purposes of this subpart, the regulations may provide that a person's entitlement to compensation is subject to the conditions (if any) that are prescribed by the regulations.
- (2) The Bank may, if it thinks fit, refuse to pay compensation under this subpart if 1 or more of those conditions are not complied with.

Example

As a condition of entitlement, the regulations require the trustees of a trust to provide information about the beneficiaries of the trust.

If the information is not provided, the Bank may refuse to pay compensation in connection with the protected deposits held by the trust.

Other matters relating to calculation of entitlement

216 Liabilities owed to licensed deposit taker must be disregarded

For the purposes of calculating the amount of compensation that an eligible depositor is entitled to under this Part, the liabilities (if any) that are owing by the eligible depositor to the licensed deposit taker must be disregarded.

217 Bank may rely on licensed deposit taker's records and information from eligible depositors and other persons

The Bank, when calculating and paying compensation under this Part, may rely on any of the following:

- (a) records or other information given by, or on behalf of, the licensed deposit taker (for example, information given under standards referred to in section 86):

- (b) information given by, or on behalf of, an eligible depositor (for example, information provided under a condition imposed under section 215);
- (c) any other information given under this subpart (for example, information given by a relevant person under section 205).

218 Bank may determine interest accrued

The Bank may determine the amount of interest accrued on a protected deposit by making an estimate that is reasonable in the circumstances, if the Bank considers that—

- (a) there is uncertainty as to the entire amount of interest that has accrued; or
- (b) the time required to ascertain the entire amount of interest that has accrued would be so long as to unduly delay the payment of compensation under this Part; or
- (c) the costs and expenses that would be incurred in the calculation made to ascertain the entire amount of interest that has accrued would, having regard to the likely difference between the ascertained amount and the estimated amount of the interest, outweigh the benefits of making the calculation.

Payment of entitlements

219 Payment of entitlements

- (1) After the Bank calculates the entitlement of an eligible depositor to compensation under this Part, the Bank must pay the compensation to, or on account of, the eligible depositor—
 - (a) in the manner prescribed by the regulations; and
 - (b) otherwise in the manner that the Bank thinks fit.
- (2) This section is subject to section 220.

220 Bank not required to pay compensation if cannot act with reasonable certainty

The Bank is not required to pay compensation under this subpart in relation to a protected deposit if it is not reasonably practicable for the Bank to do any 1 or more of the following with reasonable certainty:

- (a) make any calculation under this Part;
- (b) determine who the eligible depositor or depositors are in respect of the deposit (and what their respective shares are);
- (c) determine how to pay the compensation to, or on account of, the eligible depositor.

221 Bank may establish account on behalf of eligible depositor

- (1) The Bank may establish, on behalf of an eligible depositor, an account with a licensed deposit taker (other than a deposit taker in resolution) for the purposes of wholly or partly meeting the depositor's entitlement to compensation.
- (2) This section applies—
 - (a) whether or not the eligible depositor consents to the Bank acting under subsection (1); and
 - (b) despite anything to the contrary in any other legislation or rule of law.

222 Persons may disclose information to Bank to facilitate payment of compensation

- (1) This section applies to the following persons (a **discloser**):
 - (a) a licensed deposit taker;
 - (b) a person that holds a protected deposit under a relevant arrangement for, or on behalf of, 1 or more other persons.
- (2) A discloser may disclose any information (including personal information) about a person (**A**) to the Bank if the discloser believes, on reasonable grounds, that the disclosure of the information is necessary to facilitate 1 or more of the following:
 - (a) ascertaining whether A is an eligible depositor who is entitled to compensation under this Part;
 - (b) calculating A's entitlement to compensation under this Part;
 - (c) paying the compensation to, or on account of, A.
- (3) The discloser may also disclose personal information in accordance with information privacy principle 11 set out in section 22 of the Privacy Act 2020.

223 Bank may disclose information to facilitate payment of compensation

- (1) The Bank may disclose any information (including personal information) about a person (**A**) to any other person if the Bank believes, on reasonable grounds, that the disclosure of the information is necessary to facilitate 1 or more of the following:
 - (a) ascertaining whether A is an eligible depositor who is entitled to compensation under this Part;
 - (b) calculating A's entitlement to compensation under this Part;
 - (c) paying the compensation to, or on account of, A.
- (2) The Bank may also disclose personal information in accordance with information privacy principle 11 set out in section 22 of the Privacy Act 2020.

224 Restrictions on entitlement to compensation under scheme

- (1) This section applies if the Bank has paid to, or on account of, an eligible depositor (**A**) the full amount of compensation payable in respect of A's protected deposits in accordance with this Act.
- (2) No other person is entitled to compensation under this Part in respect of those same protected deposits.

225 Protected deposit subject to security interest

- (1) This Part applies regardless of whether the protected deposit is subject to a security interest.
- (2) If a protected deposit is subject to a security interest in favour of the licensed deposit taker that issued the deposit, any compensation paid in respect of the deposit is not subject to the security interest.
- (3) This section applies despite anything to the contrary in the Personal Property Securities Act 1999 or any other legislation, instrument, or other rule of law.

226 Recovery of compensation paid in excess or in error under scheme

- (1) This section applies if—
 - (a) any compensation paid to, or on account of, an eligible depositor out of the fund exceeds what ought to have been paid under this Act; or
 - (b) any compensation is paid in error to, or on account of, any person.
- (2) The Bank may recover the amount paid in error or excess from the person who received the compensation.
- (3) The person must repay the money in the manner that is specified by the Bank.
- (4) An amount paid in error or excess to any person is money owing in respect of the fund (*see* section 197(4)).
- (5) On recovering an amount paid in error or excess under this section, the Bank must pay the amount into the fund.
- (6) After the amount is paid into the fund, the Bank may pay the amount out of the fund (in whole or in part) to meet any obligation payable by the Bank in connection with the Bank performing or exercising functions, powers, or duties under this Part.

Subpart 4—Bank assumes rights and remedies in relation to protected
deposit

227 Bank's right of subrogation

- (1) If the Bank pays compensation under this Part to, or on account of, an eligible depositor (**A**) in respect of a protected deposit issued by a licensed deposit taker (**B**), the Bank is subrogated, to the extent of the payment, to all the rights

and remedies that, but for the subrogation, each relevant person would have had in relation to the protected deposit.

- (2) Each relevant person must (at the Bank's expense) do anything reasonably required by the Bank to enable it to exercise or enforce any subrogated rights or remedies.
- (3) This section applies—
 - (a) whether the compensation is equivalent to the full amount owing under a protected deposit or only part of that amount; and
 - (b) to give the Bank the same rights and remedies that each relevant person would have had in relation to B, any third party, and any security for an amount owing under a protected deposit; and
 - (c) to give the Bank the same priority that the holder of the protected deposit would have had in the event of B's insolvency.
- (4) In this subpart, **relevant person** means each of the following:
 - (a) A:
 - (b) a holder of the protected deposit (where A is not the holder or is not the only holder).

228 Bank may apportion compensation to determine respective rights and remedies

- (1) This section applies if—
 - (a) the Bank pays compensation to, or on account of, an eligible depositor (A) in respect of 2 or more protected deposits issued by a licensed deposit taker (B); and
 - (b) the amount that is paid is less than the total amount referred to in section 203(1)(a).
- (2) The Bank may apportion the compensation to 1 or more of the protected deposits in the manner that the Bank thinks fit.
- (3) The Bank's power includes the power to apportion the compensation between principal and interest.
- (4) The Bank's apportionment is binding on each relevant person, B, the Bank, and any third parties for the purposes of determining rights, obligations, and remedies in respect of the protected deposits.

Example

A holds a deposit of \$60,000 with bank B when a specified event notice under section 194 is issued in relation to B.

A and another person (C) jointly hold a deposit with B worth \$90,000. A's share of that deposit is \$45,000.

The total amount for A under section 203(1)(a) is \$105,000 (\$60,000 plus \$45,000).

However, A is only entitled to compensation of \$100,000 (see section 203(1)(b)).

The Bank apportions the compensation as follows:

- the \$60,000 deposit is entirely compensated. The Bank is, therefore, entirely subrogated to all of A's rights and remedies in that deposit:
- the \$45,000 deposit is compensated to the extent of \$40,000. The Bank is, therefore, subrogated to A's rights and remedies in that deposit to the extent of that payment. A retains rights and remedies in relation to the remaining \$5,000.

229 Subpart does not limit or affect other rights or remedies

This subpart does not limit or affect any other rights or remedies that the Bank may have.

Subpart 5—Use of fund to support resolution

230 Bank may use fund to support resolution

- (1) The Bank may authorise an amount to be paid out of the fund for the purposes of supporting a resolution measure undertaken or to be undertaken for a licensed deposit taker (A) and meeting all other costs of the Bank in performing or exercising its functions, powers, or duties in connection with the measure if—
 - (a) the Bank is satisfied that eligible depositors are likely to receive, as a result of the resolution measure, no less favourable treatment than would have been the case had the eligible depositors been paid compensation under subpart 3; and
 - (b) the total amount paid out of the fund under this subpart in connection with the resolution of the licensed deposit taker does not exceed the maximum amount calculated under section 231.
- (2) Subsection (1)(a) does not apply in relation to paying compensation under subpart 9 of Part 7 (no creditor or shareholder worse off).
- (3) In this Part, **resolution measure** means either of the following:
 - (a) any action taken by the Bank to further 1 or more of the purposes set out in section 259 in connection with a licensed deposit taker in resolution, whether the Bank performs or exercises its functions, powers, or duties under this Act or any other legislation:

Example

The Bank advances \$500 million from the fund to a licensed deposit taker that is in resolution (A) on certain terms and conditions. The purpose of the advance is ensuring that A's customers have some continued access to liquidity and banking services (in particular, limited access to their transactional accounts). This action has the effect that it is unnecessary for the Bank to trigger a compensation entitlement by issuing a specified event notice.

This action furthers the purposes set out in section 259, including by avoiding significant damage to the financial system, enabling the resolution to be carried out in an orderly manner, and supporting the purpose of Part 6 to protect eligible depositors to a certain extent.

- (b) paying compensation under subpart 9 of Part 7 (no creditor or shareholder worse off).

231 Bank must calculate maximum amount

- (1) The Bank must calculate the maximum amount in the manner—
 - (a) prescribed by the regulations (if any); or
 - (b) that the Bank thinks fit (if no regulations apply for the purpose).
- (2) The regulations may, in particular, require the Bank to do 1 or more of the following:
 - (a) to apply, or not to apply, specified methods of calculation:
 - (b) to apply specified principles:
 - (c) to assess values or average values at specified dates or over specified periods:
 - (d) to take specified matters into account in a specified manner:
 - (e) not to take specified matters into account.
- (3) The regulations may also require or permit the Bank to make assumptions.
- (4) Subsections (2) and (3) do not limit subsection (1).

232 Maximum amount based on net amount of compensation payable in hypothetical liquidation

- (1) The Minister must make a recommendation for regulations for the purposes of section 231 only on the advice of the Bank.
- (2) The Bank may give the advice only if the Bank is satisfied of the matter specified in subsection (4).
- (3) The Bank must also be satisfied of the matter specified in subsection (4) if the Bank is acting under section 231(1)(b).
- (4) The matter to be satisfied of is that the calculation of the maximum amount will be based on—
 - (a) the Bank's estimate of the amount of compensation (if any) that would be paid to eligible depositors under subpart 3 in the event that a liquidation of the licensed deposit taker under New Zealand law had commenced immediately before it entered into resolution; less
 - (b) the Bank's estimate of the amount that would be recovered under subpart 4 in that event.

233 Bank may apply fund money in manner it thinks fit

- (1) If an amount is paid out of the fund under this subpart, the Bank may apply that amount on the terms and conditions, and otherwise in the manner, that the Bank thinks fit.
- (2) The power in this section includes (without limitation) the power to do either or both of the following:
 - (a) to pay compensation to persons under subpart 9 of Part 7, whether or not those persons are eligible depositors:
 - (b) to advance the money to a licensed deposit taker in resolution (or to any other person) on the terms and conditions that the Bank determines (for example, terms about repayment, interest on the money that has been advanced, and the grant of a security interest over the property of the deposit taker or other person).

Independent review

234 Review of calculation

- (1) The Bank must appoint 1 or more persons as reviewer as soon as is reasonably practicable after—
 - (a) a resolution ends, if the Bank has paid money out of the fund under this subpart during the course of the resolution; or
 - (b) the Bank pays money out of the fund under this subpart to pay compensation under subpart 9 of Part 7.
- (2) Before appointing a reviewer, the Bank must be satisfied that the person—
 - (a) has the appropriate knowledge, skills, and experience to act as the reviewer under this section; and
 - (b) is independent of the Bank.
- (3) The reviewer must—
 - (a) assess whether the Bank’s calculation of the maximum amount complies with—
 - (i) the regulations made for the purpose of section 231(1)(a); or
 - (ii) section 232(4) if the Bank acted under section 231(1)(b); and
 - (b) prepare a draft report on their findings; and
 - (c) consult the Bank on the draft report; and
 - (d) provide a final report to the Bank after taking into account the Bank’s comments on the draft.
- (4) The reviewer may, when acting under subsection (3)(a), only take into account information known to the Bank at the time that it makes the calculation under section 231.

- (5) The Bank must publish the final report on its Internet site.
- (6) The Bank may redact any information from the final report that is published if the Bank considers there would be a good reason for withholding the information under the Official Information Act 1982 if a request for that information were made under that Act.

Subpart 6—Levies for depositor compensation scheme

235 Licensed deposit takers must pay levy for scheme

- (1) Every licensed deposit taker must pay to the Bank, or a prescribed person on behalf of the Bank (the **prescribed person**), a levy prescribed by the regulations made under this subpart.
- (2) A licensed deposit taker must pay the levy by the date specified for payment, whether in an invoice or other appropriate document given to the deposit taker by the Bank or the prescribed person.
- (3) The specified date for payment must be not less than 30 days after the date of the invoice or other appropriate document.
- (4) The amount of any unpaid levy and any interest under section 237 are recoverable under section 197(4).
- (5) This section is subject to section 236.

236 Certain deposit takers not required to pay levy

This subpart does not apply to a licensed deposit taker to which regulations referred to in section 192(2)(c) apply.

237 Interest on unpaid levy

- (1) A person who owes a levy under this subpart is liable to pay to the Bank or the prescribed person interest assessed at the rate and applied by the method (if any) prescribed by the regulations made under this subpart.
- (2) The interest is payable on—
 - (a) any unpaid levy; and
 - (b) any unpaid instalment payment in respect of any levy; and
 - (c) any unpaid interest that has been charged already.

238 Levy regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations providing for the levies.
- (2) The Minister must, before making a recommendation, have regard to the principle that it is desirable for the levies to be prescribed on the basis that the following costs should, over time, be met fully out of the fund:

- (a) the costs of entitlements to compensation under this Part, including the cost of establishing and maintaining the fund (taking into account any money recovered under subpart 4); and
 - (b) the costs of supporting a resolution measure under subpart 5; and
 - (c) the costs of the Bank in performing or exercising its functions, powers, or duties under this Part; and
 - (d) the costs of the Crown in connection with the Minister performing, or preparing to perform, the Minister's duties under subpart 8 (for example, the costs incurred in holding additional liquidity in preparation for performing those duties); and
 - (e) the costs of repaying any money provided to the fund under subpart 8 and any interest or fees, charges, or costs in connection with the money provided to the fund; and
 - (f) the costs of collecting the levy money.
- (3) The regulations may—
- (a) provide different levies for different classes of licensed deposit taker:
 - (b) specify the amount of levies, or the method of calculating or ascertaining the amount of levies for each class:
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the costs (including the costs referred to in subsection (2)(e)):
 - (d) provide for the payment and collection of levies (which may include providing for instalment payments):
 - (e) provide for interest under section 237:
 - (f) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
 - (g) 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:
 - (h) provide for waivers, discounts, or refunds of the whole or any part of a levy for any case or class of cases.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

239 Minister must also have regard to other levy principles

The Minister must, before making a recommendation under section 238, have regard to the following principles:

- (a) that the scheme should be fully funded by licensed deposit takers (including to meet any shortfalls to the fund):
- (b) that the amount of levies for each class of deposit taker to be specified under section 238(3)(a) should take into account—
 - (i) the likelihood of the Bank issuing a specified event notice in relation to a deposit taker of that class; and
 - (ii) the likelihood of the Bank authorising an amount to be paid out of the fund under subpart 5 in relation to a deposit taker of that class; and
 - (iii) estimates of the costs referred to in section 238(2), including estimates of the costs in connection with the Bank issuing a specified event notice in relation to a deposit taker of that class and in authorising an amount to be paid out of the fund under subpart 5 in relation to a deposit taker of that class; and
 - (iv) the effect that the obligation to pay a levy under this subpart is likely to have on the soundness of a deposit taker of that class:
- (c) the desirability of predictability in levies.

240 Minister must also have regard to statement of funding approach and Bank's advice

The Minister must, before making a recommendation under section 238, have regard to—

- (a) the statement of funding approach; and
- (b) the advice given by the Bank under section 241.

241 Bank must give advice about levy regulations

The Bank must, before regulations are made under this subpart, give the Minister advice about the proposed regulations (**levy advice**).

242 Process for developing Bank's advice

- (1) The Bank must, before giving the levy advice, consult—
 - (a) licensed deposit takers or the persons or organisations that the Bank considers are able to represent the views of licensed deposit takers; and
 - (b) any other representatives of persons that the Bank believes are significantly affected by a levy.
- (2) The consultation must include consultation relating to the amount of levies or method of calculating or ascertaining the amount of levies.

- (3) Subsection (2) does not apply to a proposed amendment to regulations that are made under this subpart if the Bank considers that the proposed amendment has no effect, or only a minor effect, on the amount of levies or any method of calculating or ascertaining the amount of levies.

243 Bank must publish levy advice

The Bank must, as soon as practicable after regulations are made under this subpart, publish a copy of the levy advice on the Bank's Internet site.

244 Effect of failure to comply

A failure to comply with section 242 or 243 does not affect the validity of any regulations made under this subpart.

Subpart 7—Statement of funding approach

245 Minister must publish statement of funding approach

- (1) The Minister of Finance must, at least every 5 years, publish a statement of the funding approach for the scheme.
- (2) *See* section 240, which requires the Minister to have regard to the statement before making a recommendation for levy regulations.
- (3) In this subpart, the **period** of a statement is the 5-year period after the date of the statement.

246 Minister must consult Bank and seek views of public

The Minister must, before publishing a statement,—

- (a) consult the Bank; and
- (b) seek the views of members of the public on the matters that the Minister considers would assist the Minister to prepare the statement; and
- (c) have regard to the comments that are provided by those members of the public within the period and in the manner specified by the Minister.

247 Contents of statement

The statement must—

- (a) contain information about the estimated costs of the scheme under this Part, including—
- (i) information on the likelihood of the Bank issuing 1 or more specified event notices during the period of the statement; and
- (ii) estimates of the costs referred to in section 238(2) during the period of the statement, including estimates of the cost of entitlements in connection with the Bank issuing 1 or more specified event notices during the period of the statement; and

- (b) contain information about the assumptions and evidence used to prepare the estimates and other information under paragraph (a); and
- (c) set out requirements for the investment of the fund (for example, requirements relating to liquidity); and
- (d) set out the Minister's proposed approach to managing the financial position of the Crown in connection with the scheme, including how the Minister's duty under subpart 8 would likely be complied with if that subpart applies; and
- (e) state whether the levies will be set with a view to the fund balance reaching, and being maintained at, a target level or within a target band and, if so,—
 - (i) that level or band; and
 - (ii) the estimated time frame for the fund balance to reach that level or band; and
- (f) state the reasons for the level or band, and time frame, under paragraph (e).

Subpart 8—Deficiency in fund

248 Deficiency in fund when specified event notice issued

- (1) This section applies if the Bank has issued a specified event notice but the property of the fund is not sufficient to do 1 or both of the following in connection with the notice:
 - (a) pay entitlements to compensation under this Part;
 - (b) meet all other costs of the Bank in performing or exercising its functions, powers, or duties under this Part.
- (2) The Minister must provide to the fund out of public money, without further appropriation than this section, money by way of grant or advance as may be necessary to meet the deficiency.

249 Deficiency in fund when supporting resolution measure

- (1) This section applies if the Bank intends to authorise an amount to be paid out of the fund under section 230 but the property of the fund is not sufficient to pay that amount.
- (2) The Minister must provide to the fund out of public money, without further appropriation than this section, money by way of grant or advance as may be necessary to meet the deficiency.

250 Minister may determine conditions

- (1) The Minister may determine the terms and conditions under which to provide money under this subpart (for example, terms about repayment of that money and interest on that money).

- (2) *See* subpart 6, which provides for levies to recover any money provided to the fund under this subpart and any interest or fees, charges, or costs in connection with the money provided to the fund.

Subpart 9—Accountability

251 Financial statements of fund

- (1) As soon as practicable after the end of each financial year, the Bank must prepare financial statements in relation to the fund for that financial year.
- (2) The financial statements must—
- (a) comply with generally accepted accounting practice (as defined in section 8 of the Financial Reporting Act 2013); and
 - (b) include any other information or explanations needed to fairly reflect the financial operations and financial position of the fund; and
 - (c) include a forecast statement of comprehensive revenue and expense for the fund prepared at the start of the financial year, for comparison with the actual financial statements.

252 Statement of responsibility

- (1) The financial statements in relation to the fund must contain, or be accompanied by, a statement of responsibility.
- (2) The statement must—
- (a) contain a statement of the signatories' responsibility for the preparation of the financial statements and for the judgments in them; and
 - (b) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting in relation to the fund; and
 - (c) contain a statement that, in the opinion of the signatories, the financial statements for the financial year fairly reflect the financial position and operations of the fund; and
 - (d) be dated and signed on behalf of the board of the Bank by 2 members.

253 Auditor-General is auditor of fund

The fund is to be treated as if it were a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

254 Audit of financial statements

- (1) The Bank must forward to the Auditor-General the financial statements of the fund before the end of the second month following the end of the financial year to which the statements relate.

- (2) The Auditor-General must—
- (a) audit the statements; and
 - (b) provide an audit report on those statements to the Bank within 30 days after receiving them.

255 Board must ensure that proper accounting records are kept

- (1) The board of the Bank must cause accounting records to be kept that—
- (a) correctly record and explain the transactions of the fund; and
 - (b) will at any time enable the financial position of the fund to be determined with reasonable accuracy; and
 - (c) will enable the members of the board of the Bank to ensure that the financial statements of the fund comply with this subpart; and
 - (d) will enable the financial statements of the fund to be readily and properly audited.
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form.

256 Financial information about fund consolidated into Bank's financial statements only if required by financial reporting standards

- (1) Information about the financial position or performance of the fund may be consolidated into the financial statements of the Bank or the Bank group only if consolidation is required by applicable financial reporting standards.
- (2) This section applies despite anything to the contrary in Part 5 of the Reserve Bank of New Zealand Act 2021.
- (3) In this section,—
- applicable financial reporting standard** has the same meaning as in section 5 of the Financial Reporting Act 2013
- Bank group** has the same meaning as in section 215 of the Reserve Bank of New Zealand Act 2021.

Subpart 10—Miscellaneous provisions

257 Liquidator must give reasonable assistance to Bank

- (1) A liquidator of a licensed deposit taker must give all reasonable assistance to enable the Bank to perform or exercise any function, duty, or power under this Part, including 1 or more of the following:
- (a) ascertaining the eligible depositors who are entitled to compensation under this Part;
 - (b) calculating the entitlement to compensation under this Part of 1 or more eligible depositors:

- (c) paying the compensation to, or on account of, 1 or more eligible depositors.
- (2) *See* section 286 of the Companies Act 1993, which allows the Bank to apply for a court order to enforce this duty.
- (3) This section does not limit any duty that the liquidator has under subpart 1 of Part 4 (which allows the Bank to require a liquidator to supply information).
- (4) For the purposes of subpart 1 of Part 4, the information that the Bank may require a liquidator to give under section 99(1)(a), and the documents that the Bank may require a liquidator to produce or to act in respect of under section 99(1)(b) or (c), include all information and documents of the licensed deposit taker that are in the possession or under the control of the liquidator.

No holding out that product is protected deposit

258 Offence to hold out that product is protected deposit

- (1) An issuer of a financial product or an associated person of the issuer must not, directly or indirectly, hold out that—
 - (a) the financial product is a protected deposit if that is not the case; or
 - (b) a holder of the financial product is entitled to compensation under this Part if that is not the case.
- (2) A person commits an offence if they—
 - (a) contravene subsection (1); and
 - (b) know that, or are reckless as to whether, what they are holding out is not the case.
- (3) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Part 7

Crisis management and resolution

Subpart 1—Preliminary provisions

259 Additional purposes of this Part

- (1) This Part has the following purposes (in addition to those set out in section 3):
 - (a) to avoid significant damage to the financial system that could result from a licensed deposit taker being in financial distress or other difficulties, including—

- (i) by maintaining the continuity of systemically important activities undertaken by licensed deposit takers in New Zealand; and
 - (ii) by mitigating, or otherwise managing, any loss of confidence in the financial system resulting from a licensed deposit taker being in financial distress or other difficulties; and
 - (b) to enable a licensed deposit taker that is in resolution to be dealt with in an orderly manner; and
 - (c) to support the purpose of Part 6; and
 - (d) to the extent not inconsistent with any of paragraphs (a), (b), and (c), to minimise the costs of dealing with, or costs or losses otherwise incurred in connection with, a licensed deposit taker that is in financial distress or other difficulties by—
 - (i) preserving the interests of creditors and maintaining the ranking of claims of creditors; and
 - (ii) dealing with the financial distress or other difficulties as quickly as is reasonably practicable; and
 - (e) to the extent not inconsistent with any of paragraphs (a), (b), and (c), to support the effective and efficient management of public financial resources by avoiding or minimising, and otherwise managing, the need to rely on public money to deal with a licensed deposit taker that is in financial distress or other difficulties.
- (2) In this Part, **public money** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- (3) This section does not limit section 3.

Subpart 2—Planning and statement of approach

Resolution plan for each licensed deposit taker

260 Bank must prepare and maintain orderly resolution plan for each licensed deposit taker

The Bank must prepare and maintain a plan, in relation to each licensed deposit taker, that is designed to facilitate dealing with the deposit taker in an orderly manner if it were to enter into resolution.

Bank's statement of approach to resolution

261 Bank must publish statement of approach to resolution

The Bank must, after consulting the Minister, publish a statement of approach to resolution on the Bank's Internet site.

262 Content of statement of approach

The statement of approach must state—

- (a) the Bank’s expected resolution strategy or strategies for dealing with licensed deposit takers under this Part; and
- (b) the Bank’s intended approach to the following in connection with dealing with licensed deposit takers under this Part:
 - (i) co-operating with relevant law enforcement or regulatory agencies, Australian financial authorities, and overseas supervisors; and
 - (ii) engaging with the Minister and relevant law enforcement or regulatory agencies about the use of powers under this Part; and
 - (iii) otherwise performing or exercising functions, powers, or duties under subparts 3 to 8.

263 Review of statement of approach

- (1) The Bank—
 - (a) must review the statement of approach within 5 years after the first statement is published and then at subsequent intervals of not more than 5 years; and
 - (b) may review the statement of approach at any other time.
- (2) In carrying out the review, the Bank must—
 - (a) consider whether any amendments to the statement of approach are necessary or desirable; and
 - (b) report on the findings to the Minister.
- (3) The Bank must publish the report on the Bank’s Internet site as soon as practicable after giving it to the Minister.

Failure to comply does not affect validity of actions

264 Failure to comply with subpart does not affect validity of Bank’s actions

The performance or exercise of a function, power, or duty is not invalid by reason only of a failure to comply with this subpart.

Subpart 3—Bank may give directions, approve sales, and replace directors

Bank may give directions

265 Bank may give directions to licensed deposit taker

- (1) The Bank may give a licensed deposit taker (A) a direction if the Bank—

- (a) has reasonable grounds to believe that 1 or more of the circumstances set out in subsection (2) apply; and
 - (b) considers that directing A is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in subsection (2):
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in subsection (2):
 - (iii) to avoid any contravention or further contravention of a prudential obligation in connection with the matter set out in subsection (2).
- (2) The circumstances are as follows:
- (a) A is insolvent or is likely to become insolvent:
 - (b) the circumstances of A are such as to be prejudicial to the soundness of the financial system:
 - (c) A's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) the soundness of the financial system:
 - (d) A has contravened, may have contravened, or is likely to contravene a requirement under an applicable standard, or a condition of its licence, to maintain a minimum amount (or ratio) of capital:
 - (e) A has contravened, may have contravened, or is likely to contravene any other prudential obligation in a material respect:
 - (f) A has been or is operating fraudulently or recklessly:
 - (g) an overseas supervisor has taken, or is taking, regulatory action against A or against a person that controls A (whether or not that action has been completed).
- (3) Subsection (2)(d) does not limit subsection (2)(e).
- (4) In this section, **regulatory action** has the same meaning as in section 280(3).

266 Bank may give directions to associated person

- (1) The Bank may give an associated person (**B**) of a licensed deposit taker (**A**) a direction if the Bank—
- (a) has reasonable grounds to believe that 1 or more of the circumstances set out in subsection (2) apply; and
 - (b) considers that directing B is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in subsection (2):
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in subsection (2):

- (iii) to avoid any contravention or further contravention of a prudential obligation in connection with the matter set out in subsection (2).
- (2) The circumstances are as follows:
- (a) A's business and affairs are so closely connected with B that the Bank would be unable to effectively exercise the powers conferred by this Part in relation to A unless a direction is issued to B:
 - (b) the circumstances of B are such as to be prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect:
 - (c) B's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect.

267 Scope of directions

- (1) A direction given under this subpart may require a licensed deposit taker or an associated person to do 1 or more of the following:
- (a) consult the Bank, at the times and in the manner specified by the Bank, about the circumstances of the deposit taker or associated person and the actions or proposed actions to resolve any difficulties facing the deposit taker or associated person:
 - (b) carry on its business, or any part of its business, in accordance with the direction:
 - (c) cease to carry on its business, or any part of its business, in accordance with the direction:
 - (d) ensure that any director, or any senior manager or other employee, of the deposit taker or associated person ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends:
 - (e) remove or replace any of the directors of an associated person of the deposit taker:
 - (f) remove or replace its auditor or appoint an auditor approved by the Bank:
 - (g) take the action that is specified in the direction to address a contravention of any prudential obligation:
 - (h) take the action that is specified in the direction to address any circumstances of financial difficulties:
 - (i) implement all, or part, of the deposit taker's contingency and recovery plans in accordance with the direction (*see* section 89):

- (j) issue shares in accordance with the direction:
 - (k) take the action that is specified in the direction that is necessary or desirable for any matter in section 80(4)(a), (b), (c), or (d) to occur under a bail-in instrument.
- (2) If the events or circumstances referred to in section 80(2)(c) for a bail-in instrument include a direction under this subpart, a direction given under this subpart may provide for a matter in section 80(4)(a), (b), (c), or (d) to occur.

268 Direction must be in writing and state grounds

A direction given under this subpart must—

- (a) be in writing; and
- (b) state the grounds on which it is given.

Bank may approve sale or disposition

269 Bank may approve sale or disposition

- (1) The Bank may approve a sale or other disposition of the whole or part of the capital or business undertaking of either or both of the following:
- (a) a licensed deposit taker, if the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in section 265(2) exist:
 - (b) an associated person of the licensed deposit taker, if the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in section 266(2) exist.
- (2) If the Bank grants an approval,—
- (a) it must be given by written notice to the parties; and
 - (b) the provisions of any legislation, or of any instrument, requiring any consent, licence, permission, or clearance or other authority do not apply as a condition of the legality or validity of the sale or other disposition.

Compare: 1989 No 157 s 116(2), (3)

Bank may remove, replace, or appoint director

270 Power to remove, replace, or appoint director of licensed deposit taker

- (1) The Bank may remove or replace a director of a licensed deposit taker (A), or appoint a person as a director of a licensed deposit taker (A), if the Bank—
- (a) has reasonable grounds to believe that 1 or more of the following apply:
 - (i) A is insolvent or is likely to become insolvent:
 - (ii) the circumstances of A are such as to be prejudicial to the soundness of the financial system:
 - (iii) A has contravened, may have contravened, or is likely to contravene any prudential obligation in a material respect; and

- (b) considers that exercising a power under this section is necessary or desirable.
- (2) This section does not apply to a director of an overseas person.
- (3) This section and section 271 have effect despite any agreement, legislation, or rule of law, or the terms of the constitution of a licensed deposit taker.

271 How Bank exercises power to remove, replace, or appoint director

- (1) The Bank must—
 - (a) exercise a power under section 270 by giving written notice to—
 - (i) the director concerned, or the person being appointed; and
 - (ii) in the case of the removal, replacement, or appointment of a director, the Registrar of Companies; and
 - (b) give written notice of the exercise of the power to the licensed deposit taker.
- (2) A notice given under subsection (1)(a)(ii) is sufficient compliance with section 159 of the Companies Act 1993 as long as, in the case of an appointment, the notice is accompanied by the form of consent and certificate required under section 152 of that Act.

Disclosure of direction or notice

272 Prohibition on disclosing or publishing direction or notice

- (1) A person must not disclose or publish the fact that a direction has been given under this subpart or that a notice has been given under section 271.
- (2) Subsection (1) does not apply to the disclosure or publication of the fact that a direction or notice has been given if the disclosure or publication is made—
 - (a) to any director, senior manager, or professional or financial adviser of the licensed deposit taker, or associated person of a licensed deposit taker, to which the direction or notice relates; or
 - (b) with the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the licensed deposit taker or associated person of a licensed deposit taker; or
 - (c) by, or on behalf of, the Bank, or with the written consent of the Bank,—
 - (i) to the public or any class of the public; or
 - (ii) to any person who has a proper interest in knowing that the direction or notice has been given.
- (3) For the purposes of subsection (2)(b) and (c),—
 - (a) the Bank's consent must not be unreasonably withheld; and

- (b) in considering whether to give its consent, the Bank must take into account the time that has elapsed since the direction or notice was given.
 - (4) Subsection (1) does not apply to the disclosure or publication of the fact that a direction has been given under section 267(1)(d) if the disclosure or publication is for the purpose of giving effect to the direction.
 - (5) Subsection (1) does not apply to the disclosure or publication of the fact that the Bank has directed a matter in section 80(4)(a), (b), (c), or (d) to occur (which relates to bail-in).
- Compare: 2010 No 111 s 150(1)–(4)

273 Offence to contravene prohibition

A person that contravenes section 272 commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$100,000;
- (b) in any other case, to a fine not exceeding \$2,500,000.

Compare: 2010 No 111 s 150(5)

Subpart 4—Resolution of licensed deposit takers and associated persons

274 Resolution of licensed deposit takers and associated persons

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—

- (a) declare that a licensed deposit taker (A) is in resolution; and
- (b) declare that 1 or more associated persons of a licensed deposit taker are in resolution.

Compare: 1989 No 157 s 117(1)

275 Resolution of subsidiaries

- (1) If a licensed deposit taker (A) enters resolution, every subsidiary of A also enters resolution unless the subsidiary is declared to be a subsidiary to which the order under section 274 does not apply.
- (2) If A acquires a subsidiary after it enters resolution, the subsidiary is also in resolution unless an Order in Council is made before the acquisition that declares that the subsidiary to be acquired is not in resolution.
- (3) A person that holds office as the resolution manager in respect of A also holds office as the resolution manager in respect of the subsidiaries that are in resolution (unless a notice under section 357 provides otherwise).

Compare: 1989 No 157 s 117(2), (2A)

276 Resolution for overseas persons

If a licensed deposit taker in resolution is an overseas person, this subpart and subparts 5 to 8 apply only to—

- (a) the property, rights, and liabilities relating to its New Zealand business; and
- (b) the management or conduct of its New Zealand business.

Compare: 1989 No 157 s 117(3)

277 Date on which, and time at which, resolution starts

- (1) An Order in Council made under section 274 must specify the date on which, and the time at which, it comes into force.
- (2) The date and time must not be earlier than the date on which, and the time at which, the Order in Council is made.
- (3) A licensed deposit taker or an associated person—
 - (a) **enters resolution** when the Order in Council comes into force (or as referred to in subsection (4)); and
 - (b) remains **in resolution** until the end of the resolution under section 282.
- (4) However,—
 - (a) a subsidiary that is in resolution as referred to in section 275(2) enters resolution when it is acquired:
 - (b) a body corporate that is in resolution as referred to in section 316 or 321 enters resolution when it is formed and registered.

Compare: 1989 No 157 s 117(4), (5)

278 Questions about whether transactions are before or after resolution

- (1) This section applies if a question arises as to whether, on the date on which a licensed deposit taker or an associated person entered resolution, an act was done or a transaction was entered into or effected before or after the deposit taker or person entered resolution.
- (2) The act or transaction must, in the absence of proof to the contrary, be treated as having been done or entered into or effected after the deposit taker or person enters resolution.

Compare: 1989 No 157 s 117(1A)

279 Limitation on application of provisions to covered bond SPVs

A covered bond SPV (as defined in section 404) is not—

- (a) an associated person for the purposes of section 274; or
- (b) a subsidiary for the purposes of section 275.

Compare: 1989 No 157 s 139J(4)

280 Grounds on which licensed deposit taker may be declared to be in resolution

- (1) The Bank may make a recommendation under section 274 in respect of a licensed deposit taker (A) only if the Bank—

- (a) is satisfied on reasonable grounds that 1 or more of the following matters apply:
 - (i) A is insolvent or is likely to become insolvent:
 - (ii) A has contravened, may have contravened, or is likely to contravene a requirement under an applicable standard, or a condition of its licence, to maintain a minimum amount (or ratio) of capital:
 - (iii) A has contravened a direction given under subpart 3:
 - (iv) A has persistently or seriously contravened any other prudential obligation:
 - (v) an overseas supervisor has taken, or is taking, regulatory action against A or against a person that controls A (whether or not that action has been completed); and
 - (b) is satisfied that there is no reasonable prospect of the matters that apply under paragraph (a) being adequately dealt with to the Bank's satisfaction in a timely and orderly way other than through resolution.
- (2) Subsection (1)(a)(ii) and (iii) does not limit subsection (1)(a)(iv).
- (3) In this section, **regulatory action**, in relation to A or a person that controls A, means—
- (a) action to cancel or suspend the licence, registration, or other authorisation of A or the person to act as a bank or other deposit taker (or action equivalent to cancelling or suspending such a licence, registration, or authorisation); or
 - (b) a direction to A or the person to the effect of 1 or more of the following:
 - (i) to take specified action to improve its solvency:
 - (ii) to carry on its business, or any part of its business, in accordance with the direction:
 - (iii) to cease to carry on its business, or any part of its business, in accordance with the direction.

Compare: 1989 No 157 s 118

281 Grounds on which associated person may be declared to be in resolution

- (1) The Bank may make a recommendation under section 274 in respect of an associated person (**B**) of a licensed deposit taker (**A**) if the Bank—
- (a) is satisfied on reasonable grounds that 1 or more of the matters set out in subsection (2) apply; and
 - (b) is satisfied that there is no reasonable prospect of the matters that apply under paragraph (a) being adequately dealt with to the Bank's satisfaction in a timely and orderly way other than through resolution.
- (2) The matters are as follows:

- (a) B has contravened, or is contravening, any direction or other requirement imposed by or under this Act or the regulations:
- (b) A's business and affairs are so closely connected with B that the Bank will be unable to exercise effectively the powers conferred by this Part in relation to A unless B is in resolution:
- (c) the circumstances of B are such as to be prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect:
- (d) B's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect.

282 End of resolution

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that a licensed deposit taker or an associated person that is in resolution is no longer in resolution.
- (2) Despite subsection (1), the recommendation of the Bank is not required if public money is involved in the resolution (within the meaning of section 349(2)).
- (3) A licensed deposit taker or an associated person is also no longer in resolution if it is put into liquidation on the application of the Bank.
- (4) The resolution ends,—
 - (a) in the case of subsection (1), at the date and time specified in the Order in Council; or
 - (b) in the case of subsection (3), at the commencement of the liquidation.
- (5) If an Order in Council declares that a licensed deposit taker is no longer in resolution, every subsidiary of the deposit taker, except a subsidiary specified in the order, is also no longer in resolution (with effect at the same date and time specified under subsection (4)(a)).

Compare: 1989 No 157 s 144

283 Application of resolution provisions to other persons in resolution

- (1) References in subparts 5, 6, 7, and 8 to a licensed deposit taker (or similar references) must be read as including references to another person in resolution (unless the context otherwise requires).
- (2) In this section, **another person in resolution** means any of the following persons if the person is in resolution:
 - (a) a subsidiary or any other associated person of a licensed deposit taker:

(b) a body corporate formed and registered under section 314 or 320.

Compare: 1989 No 157 s 140(2)(b)

Subpart 5—Moratorium and restriction on resolution trigger

284 Moratorium

- (1) If a licensed deposit taker (A) is in resolution, no person may do any of the following:
- (a) commence or continue a proceeding, including a proceeding by way of counterclaim, against A:
 - (b) issue an execution, attach a debt, or otherwise enforce or seek to enforce a judgment or an order obtained in respect of A:
 - (c) take any steps to put A into liquidation or voluntary administration:
 - (d) enter into possession of, sell, or appoint a receiver of A's property or property in respect of which A has an equity of redemption:
 - (e) exercise or continue a power or rights under, or in accordance with, a mortgage, charge, debenture, instrument, or other security interest over A's property:
 - (f) claim or recover, under a retention of title clause, hire purchase agreement, mortgage, lease, or security interest, any property in A's possession:
 - (g) determine or forfeit a tenancy, retake or re-enter premises, or exercise or continue a power or rights under or in connection with a lease, against A:
 - (h) exercise a right of set-off against A.
- (2) Nothing in subsection (1) limits or prevents the Bank from performing or exercising any functions, powers, or duties under this Act.
- (3) This section is subject to section 421(1) to (3).

Compare: 1989 No 157 s 122(1), (10)

285 Period of moratorium

- (1) The moratorium under section 284(1) ends on the earlier of the following:
- (a) the end of the resolution:
 - (b) the close of the date that is 12 months after the date on which the licensed deposit taker enters resolution.
- (2) However, the Bank may, by notice in the *Gazette*, extend the period of the moratorium under section 284(1) beyond the period referred to in subsection (1)(b) for a further period not exceeding 12 months, and may in the same manner extend that period on successive occasions.

- (3) The Bank may extend the period of the moratorium only if it is satisfied that it is necessary or desirable to do so for either or both of the purposes in section 259(1)(a) and (b).
- (4) The Bank may only issue a notice to extend the period of the moratorium before the end of the period to be extended.
- (5) An extension may relate separately to a licensed deposit taker and any 1 or more associated persons of the deposit taker.

286 Bank must publish notice on Internet site

The Bank must, as soon as practicable, publish a notice under section 285(2) on the Bank's Internet site.

287 Restriction on resolution trigger

- (1) This section applies if a licensed deposit taker (A) is party to an agreement, whether the proper law of the agreement is the law of New Zealand or the law of any other jurisdiction.
- (2) Neither of the matters referred to in subsection (3) allows the agreement, or a party to the agreement (other than A), to do any of the following:
 - (a) deny any liability or obligation under the agreement:
 - (b) accelerate or require the payment or performance of a liability or an obligation:
 - (c) terminate or close out any transaction relating to the agreement:
 - (d) enforce any security interest under the agreement.
- (3) The matters are as follows:
 - (a) A, or an associated person of A, entering into resolution:
 - (b) the Bank or the Minister performing or exercising 1 or more functions, powers, or duties under subpart 4, this subpart, or any of subparts 6 to 8 in relation to A or an associated person of A.
- (4) This section continues to apply despite the end of the period of the moratorium under section 285.
- (5) This section is subject to section 421(1) to (3).

288 Person may commence or continue proceeding with leave

Despite sections 284 and 287, a person may commence or continue a proceeding against the licensed deposit taker for the purpose of determining whether a right or liability exists if the leave of the Bank or the court is first obtained.

Compare: 1989 No 157 s 122(2)

289 Bank may waive application of moratorium and restriction on resolution trigger

- (1) Despite sections 284 and 287, the Bank may waive the application in whole or in part of either or both of those sections to a creditor or class of creditors in respect of the whole or part of a claim of, or security interest held by, the creditor or class of creditors.
- (2) This section does not apply to section 284(1)(c).

Compare: 1989 No 157 s 122(3)

290 Moratorium and restriction on resolution trigger do not affect existence or priority of security interest

Sections 284 and 287 do not affect the existence of any security interest over the property of the licensed deposit taker or its priority over other debts.

Compare: 1989 No 157 s 122(4)

291 Moratorium does not limit or prevent obligations incurred or rights granted after deposit taker enters resolution

Section 284(1)(a), (b), and (d) to (h) does not limit or prevent a person from taking any of the actions specified in those paragraphs in relation to an obligation incurred or a right granted under a deed, an instrument, a trust, or an agreement entered into by the licensed deposit taker after the date on which, and the time at which, the deposit taker enters resolution.

Compare: 1989 No 157 s 122(5)

292 Moratorium and restriction on resolution trigger do not limit or affect certain rights under netting agreement or rights under rules of designated FMI

- (1) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 apply,—
 - (a) section 284(1)(h) does not apply to a right of set-off provided for in the netting agreement; and
 - (b) sections 284(1) and 287 do not limit or prevent the exercise of any of the following rights under the netting agreement:
 - (i) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event that is specified in the netting agreement and is an event (including entering resolution) that occurs not later than when the licensed deposit taker enters resolution;
 - (ii) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and

- (c) sections 284(1) and 287 do not limit or prevent the exercise of any right referred to in section 284(1)(d) to (f) in respect of any property of the licensed deposit taker (A) to the extent that the right is exercised to enforce, or to assist in enforcing, the due performance, by A, of obligations entered into by A under a recognised multilateral netting agreement (within the meaning of section 310A of the Companies Act 1993).
- (2) In the case of a derivative, a relevant security interest, or a specified instrument,—
 - (a) subsection (1)(b) does not apply to the extent that it relates to section 287; but instead
 - (b) section 294 applies.
- (3) If subpart 5 of Part 3 of the Financial Market Infrastructures Act 2021 applies to a transaction or an arrangement,—
 - (a) sections 284(1) and 287 do not limit or prevent the exercise of any right relating to the calculation of a netted balance under the rules of the FMI; and
 - (b) sections 284(1) and 287 do not limit or prevent the exercise of any right referred to in section 284(1)(d) to (f) in respect of any property of the licensed deposit taker (A) if the right that is exercised—
 - (i) is provided under the rules of the FMI; and
 - (ii) has been granted to secure, or to assist in securing, the due performance, by A, of obligations entered into by A under those rules.
- (4) In this section,—
 - (a) **designated FMI**, **netting**, and **participant** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021; and
 - (b) **netted balance** means any amount calculated in accordance with the rules of a designated FMI as the net debit payable by, or on behalf of, a participant of the designated FMI to, or on behalf of, another participant of that designated FMI for all or any claims or obligations to which those rules apply; and
 - (c) **rules** is to be read in accordance with section 35 of the Financial Market Infrastructures Act 2021.

Compare: 1989 No 157 s 122(7)–(9)

293 Moratorium does not limit or prevent certain things in relation to derivatives, etc

- (1) Section 284(1) does not limit or prevent an agreement, or a party to an agreement, from doing any of the things referred to in subsection (2) in relation to a derivative, a relevant security interest, or a specified instrument.
- (2) The things are as follows:

- (a) denying any liability or obligation under the agreement:
 - (b) accelerating or requiring the payment or performance of a liability or an obligation:
 - (c) terminating or closing out any transaction relating to the agreement:
 - (d) enforcing any security interest under the agreement.
- (3) In this section and sections 292, 294, and 296,—

collateral has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

derivative means a derivative within the meaning of section 8(4) of the FMCA (but disregarding any specified declaration)

possession has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

qualifying derivative has the same meaning as in section 62A of the Corporations (Investigation and Management) Act 1989

relevant security interest means a security interest that secures payment or performance of an obligation under or in relation to a qualifying derivative

specified declaration means a declaration under subpart 3 of Part 9 of the FMCA other than a declaration that has been specified in the regulations for the purposes of this definition

specified instrument means an agreement of a kind that is—

- (a) prescribed in the regulations; and
- (b) entered into in connection with a netting agreement (within the meaning of section 310A of the Companies Act 1993).

294 Restriction on resolution trigger does not limit or prevent certain things in relation to derivatives, etc, after stay

- (1) Section 287 does not limit or prevent an agreement, or a party to an agreement, from doing any of the things referred to in subsection (2) in relation to a derivative, a relevant security interest, or a specified instrument if the thing is done after—
- (a) the default time, unless paragraph (b) applies (*see* subsection (4)); or
 - (b) an earlier or a later time specified by the Bank in a notice issued under section 295.
- (2) The things are as follows:
- (a) denying any liability or obligation under the agreement:
 - (b) accelerating or requiring the payment or performance of a liability or an obligation:
 - (c) terminating or closing out any transaction relating to the agreement:
 - (d) enforcing any security interest under the agreement.

- (3) However, in the case of a relevant security interest, subsection (1) applies only if, before the agreement or party does the thing referred to in subsection (2), the collateral is delivered, transferred, held, registered, or otherwise designated so as to be in the possession or under the control of—
- (a) the enforcing counterparty; or
 - (b) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) In this section and section 295, **default time** means the close of the day after the date on which the licensed deposit taker enters resolution.
- (5) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (3) (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (3) of this section).

Compare: 1989 No 157 s 122(9A), (9B); 2021 No 13 s 125

295 Bank may reduce or extend stay

- (1) The Bank may, before the default time, issue a notice that specifies an earlier or a later time for the purposes of section 294(1)(b) in respect of a licensed deposit taker (A) that is in resolution.
- (2) The time that is specified may be—
- (a) before the default time; or
 - (b) after the default time if the Bank is satisfied of all of the matters set out in section 296.
- (3) The notice may relate to all things referred to in section 294(2) or to a class or classes of those things.

Compare: 1989 No 157 s 122C; 2021 No 13 s 126

296 Matters Bank must be satisfied of when extending stay

The matters referred to in section 295(2)(b) are that—

- (a) A is able to meet all of the following liabilities as and when those liabilities become due and payable:
 - (i) A's liabilities under all netting agreements to which sections 310A to 310O of the Companies Act 1993 apply;
 - (ii) A's liabilities in respect of security interests over collateral to the extent that the security interests secure payment or performance of obligations under or in relation to derivatives;
 - (iii) A's liabilities that are subject to netting under the rules of a designated FMI; and
- (b) A is able to pay its debts as they become due in the normal course of business; and

- (c) either—
- (i) A complies with the minimum capital requirements (if any) to which it is subject under an applicable standard; or
 - (ii) there are satisfactory arrangements in place to ensure that A meets all of its liabilities referred to in paragraph (a) as and when those liabilities become due and payable and those arrangements will remain in place until A complies with the requirements referred to in subparagraph (i) or the resolution ends, whichever occurs first.

Compare: 1989 No 157 s 122D

297 Publication of notice

- (1) The Bank must, as soon as practicable,—
- (a) publish any notice issued under section 295 on the Bank’s Internet site; and
 - (b) notify the issue of the notice in the *Gazette*.
- (2) The notice may take effect at any time after it is published under subsection (1)(a).
- (3) The notice cannot be varied or revoked.

Compare: 1989 No 157 s 122E

Subpart 6—Conduct of resolution

Bank must act as resolution authority

298 Bank is resolution authority

The Bank must act as the resolution authority in relation to a resolution of a licensed deposit taker.

299 Function of resolution authority

- (1) The Bank’s function as the resolution authority is to ensure that a resolution of a licensed deposit taker is carried out in a way that furthers the purposes set out in section 259.
- (2) The function includes performing or exercising the duties or powers imposed or conferred on the Bank under subparts 5 to 8.

300 Bank must supervise resolution manager

- (1) The Bank as the resolution authority must supervise a resolution manager to ensure that the resolution manager efficiently and effectively performs or exercises the resolution manager’s functions, powers, and duties.
- (2) *See—*
- (a) section 353, which requires a resolution manager to comply with the Bank’s directions; and

- (b) section 354, which requires a resolution manager to consult the Bank and have regard to the Bank's advice; and
- (c) sections 355 and 356, which require a resolution manager to report to the Bank.

301 Bank must regularly report to Minister on conduct of resolution

- (1) The Bank must regularly report to the Minister on the conduct of a resolution.
- (2) The reports must—
 - (a) be made when required by the Minister; and
 - (b) contain the information required by the Minister.

Resolution manager has management and control of deposit taker

302 Management of licensed deposit taker vests in resolution manager

The management of a licensed deposit taker in resolution vests in the resolution manager on and after the time when it enters resolution.

Compare: 1989 No 157 s 128

303 Directors, managers, and other persons may act only with resolution manager's permission

- (1) If a licensed deposit taker is in resolution, it is not lawful or competent for a director, a senior or any other manager, or any other person to be engaged in the management or conduct of its business, or to act as an officer, agent, or employee of the deposit taker, except with the permission of the resolution manager and to the extent that the permission extends.
- (2) This section is subject to section 421(1) to (3).

Compare: 1989 No 157 s 128

Resolution manager's general powers

304 Resolution manager's general powers

The resolution manager has all of the powers, rights, and authorities that are necessary or desirable to enable the resolution manager to further the purposes set out in section 259 in connection with the resolution of a licensed deposit taker.

Compare: 1989 No 157 s 129(1)

305 Resolution manager has powers of deposit taker and of its shareholders, members, and board

The resolution manager has—

- (a) all the powers, rights, and privileges that the licensed deposit taker in resolution has under any agreement or otherwise; and
- (b) in the case of a body corporate in resolution,—

- (i) all the powers of the shareholders or members in general meeting; and
- (ii) all the powers of the board of directors of the body corporate; and
- (c) in the case of a partnership in resolution, all the powers exercisable by a partner or partners; and
- (d) in the case of any other unincorporated body of persons in resolution, all the powers exercisable by its governing body.

Compare: 1989 No 157 s 129(2)

306 Resolution manager may carry on business of licensed deposit taker

The resolution manager may carry on all or any part of the business of the licensed deposit taker in resolution and has, in relation to the deposit taker, all of the powers, rights, and authorities that are necessary or desirable to carry on that business.

Compare: 1989 No 157 s 130

307 Resolution manager may pay creditors and compromise claims

The resolution manager may do 1 or more of the following in relation to a licensed deposit taker in resolution:

- (a) pay, in whole or in part, any creditor or class of creditors of the deposit taker:
- (b) make a compromise or an arrangement with a creditor, or person claiming to be a creditor, of the deposit taker:
- (c) compromise all calls, debts, and claims subsisting, or supposed to subsist, between the deposit taker and any other person:
- (d) deal with all questions relating to the property of the deposit taker:
- (e) give a complete or partial discharge in relation to any calls, debts, or claims subsisting, or supposed to subsist, between the deposit taker and any other person.

Compare: 1989 No 157 s 131

Resolution manager's miscellaneous powers

308 Resolution manager may offer and issue deposit taker's financial products

- (1) The resolution manager may offer and issue any financial products in respect of which a licensed deposit taker in resolution (**A**) is the issuer (for example, shares in **A** or debt securities in respect of which **A** is liable to repay money owing under the securities).
- (2) An offer and issue of financial products may be made to any person or persons, and on any terms and conditions, that the resolution manager thinks fit.

309 Resolution manager may disclaim onerous property

- (1) The resolution manager has all of the powers conferred on a liquidator of a company by section 269 of the Companies Act 1993 and may exercise the powers in the same manner as if the resolution manager were the liquidator of a company in liquidation under that Act.
- (2) Section 269 of the Companies Act 1993 applies to the disclaimer of any property of the licensed deposit taker as if the property were property of a company to which that section applied.
- (3) This section does not limit section 304.

Compare: 1989 No 157 s 129(3)

310 Resolution manager may trace property improperly disposed of

- (1) This section applies if—
 - (a) any property has been acquired by a person in circumstances where it is just and equitable that the person should hold it on trust for a licensed deposit taker in resolution; or
 - (b) any property has been improperly disposed of, whether or not the property has become subject to a trust.
- (2) The court may, if it thinks fit, make an order—
 - (a) that the property be transferred or delivered to the resolution manager:
 - (b) that any person who acquired or received the property, or their administrator, pay to the resolution manager a sum not exceeding the value of the property.
- (3) For the purpose of giving effect to the order, the court may make any further order that it thinks fit.
- (4) This section and section 311 do not limit the Companies Act 1993.

Compare: 1989 No 157 s 138(1), (2), (4)

311 Order may not deprive good-faith purchaser for value

An order under section 310 does not deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.

Compare: 1989 No 157 s 138(3)

312 Resolution manager may change balance date

- (1) The resolution manager may change the balance date of a licensed deposit taker that is in resolution to any date that the resolution manager thinks fit.
- (2) The Commissioner of Inland Revenue's approval of the change is not required.
- (3) Sections 42 and 43 of the Financial Reporting Act 2013 do not apply in relation to the change.

Bank may investigate affairs of licensed deposit taker

313 Bank's investigation powers

- (1) In relation to a licensed deposit taker in resolution, the Bank has all the powers conferred, and all the duties imposed, on a person appointed under subpart 5 of Part 4.
- (2) The following provisions apply, with any necessary modifications, as if the Bank were appointed under section 126:
 - (a) sections 127 and 128 (which relate to powers to carry out an investigation of the affairs of a licensed deposit taker); and
 - (b) section 129 (which sets out offences in relation to investigations).
- (3) Subsection (2) does not limit subsection (1).
- (4) This section does not limit any other power conferred on the Bank (for example, powers under subpart 1 of Part 4).

Compare: 1989 No 157 s 117(6)

Bank may form body corporate to acquire New Zealand business

314 Bank may form body corporate to acquire New Zealand business

- (1) If an overseas licensed deposit taker (**A**) is in resolution, the Bank may do 1 or more of the following:
 - (a) form and register a body corporate (**B**) under the Companies Act 1993:
 - (b) subscribe for or acquire, as trustee for A, all or any of B's shares:
 - (c) issue all or any of B's shares as fully or partly paid on the terms and conditions that the Bank thinks fit.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that the whole or any part of any property, rights, and liabilities of A relating to its New Zealand business will vest in B on a date specified in the order.
- (3) The property, rights, and liabilities of A vest in B on the date specified.

Compare: 1989 No 157 s 123(1), (2)

315 Vesting does not affect deposit taker's obligations or place it in breach

A vesting under section 314—

- (a) does not reduce, extinguish, or affect any obligation or liability of the overseas licensed deposit taker (**A**); and
- (b) does not constitute a breach or repudiation of any agreement entered into by A with any person.

Compare: 1989 No 157 s 123(3)

316 Body corporate is also subject to resolution

- (1) The body corporate (**B**) referred to in section 314 must be treated as being in resolution.
- (2) The resolution manager of the licensed deposit taker is the resolution manager of **B** as if that resolution manager had been appointed under section 357, and the provisions of this Part apply accordingly.
- (3) Subsection (2) does not prevent the Bank from exercising a power to terminate a resolution manager's appointment or to replace a resolution manager.
- (4) The period of moratorium under subpart 5 is initially the same as the period of moratorium that applies to the licensed deposit taker.
- (5) However, the Bank may exercise a power under section 285(2) in relation to **B** separately from the licensed deposit taker.

Compare: 1989 No 157 s 123(4)

317 Vesting of property or rights subject to security interest

- (1) An order may be made under section 314 vesting any property and rights of an overseas licensed deposit taker (**A**) in a body corporate (**B**) despite the existence, or the terms and conditions, of any security interest over the property, or over those rights, in favour of any other person.
- (2) Any property or rights that are declared to vest under an order made under section 314 in **B** and that are subject to a security interest in favour of any other person continue to be subject to the security interest.

Compare: 1989 No 157 s 124

318 Proof of vesting

- (1) A registrar is not obliged solely by reason of section 314 to change the name of the licensed deposit taker (**A**) referred to in that section to that of the body corporate (**B**) formed and registered under that section in any register or in any document.
- (2) If **B** presents to a registrar or any other person an instrument that meets the requirements of subsection (3), the instrument is, in the absence of evidence to the contrary, sufficient proof that the property that is the subject of the instrument is vested in **B**.
- (3) The requirements are that the instrument—
 - (a) is executed or purports to be executed by **B**; and
 - (b) relates to any property held by **A** before the date specified in an Order in Council made under section 314; and
 - (c) contains a statement that the property has become vested in **B** under that section.
- (4) Subsection (2) applies whether or not the instrument is or includes an instrument of transfer.

- (5) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 1989 No 157 s 125

Bank may dispose of business undertaking or property, rights, or liabilities

319 Bank's disposal power

- (1) The Bank may do 1 or more of the following in relation to a licensed deposit taker in resolution (**A**):
- (a) sell, transfer, or otherwise dispose of the whole or any part of the business undertaking of A:
 - (b) sell, transfer, or otherwise dispose of any property or rights of A:
 - (c) transfer or otherwise dispose of any liabilities of A:
 - (d) transfer any financial products (in respect of which A is the issuer).
- (2) A sale, transfer, or disposal may be made to any person or persons, and on any terms and conditions, that the Bank thinks fit.

Example

Deposit taker A is in resolution. A's business has 3 main parts: residential property lending, rural lending, and other business lending.

The Bank transfers A's residential property lending business to another deposit taker.

The Bank then forms a company B under section 320 to act as a bridge institution. The Bank transfers the rural lending business to B.

The Bank also forms a company C under section 320 to manage A's other property. The Bank transfers the property to C.

Compare: 1989 No 157 s 132(1)

320 Bank may dispose of business undertaking, etc, to bridge institution or asset management vehicle

- (1) For the purposes of section 319, the Bank may do 1 or more of the following:
- (a) form and register a body corporate (**B**) under the Companies Act 1993:
 - (b) subscribe for or acquire all or any of the shares of B:
 - (c) make 1 or more sales, transfers, or dispositions to B under section 319(1)(a) to (c):
 - (d) offer, issue, or sell all or any of the shares in B to any person, credited as fully or partly paid, on the terms and conditions that the Bank thinks fit:
 - (e) sell, transfer, or dispose of the whole or any part of the business undertaking of B to any 1 or more persons on the terms and conditions that the Bank thinks fit.

- (2) This section does not limit any other powers of the Bank.

Compare: 1989 No 157 s 132(2)

321 Body corporate is also subject to resolution

- (1) The body corporate (**B**) referred to in section 320 must be treated as being in resolution.
- (2) However, subsection (1) does not apply if, before B is formed and registered, the Bank publishes a notice in the *Gazette* that states—
- (a) that the Bank intends to form and register a body corporate under section 320; and
 - (b) B’s proposed name; and
 - (c) that subsection (1) will not apply to B.
- (3) If subsection (1) applies, the resolution manager of the licensed deposit taker is the resolution manager of B as if that resolution manager had been appointed under section 357, and the provisions of this Part apply accordingly.
- (4) Subsection (3) does not prevent the Bank from exercising a power to terminate a resolution manager’s appointment or to replace a resolution manager.
- (5) If subsection (1) applies, the period of moratorium for B under subpart 5 is initially the same as the period of moratorium that applies to the licensed deposit taker.
- (6) However, the Bank may exercise a power under section 285(2) in relation to B separately from the licensed deposit taker.

Compare: 1989 No 157 s 123(4)

322 Consents not required under other legislation or agreement, and transactions do not constitute breach

- (1) The provisions of any legislation or agreement requiring any consent, licence, permission, clearance, or other authority do not apply to any of the following:
- (a) a sale, transfer, or other disposition under section 319(1)(a) to (c) or 320(1)(c) or (e):
 - (b) an offer, issue, sale, transfer, or other disposition of financial products under section 319(1)(d), 320(1)(d), or 308.
- (2) A sale, transfer, disposition, offer, or issue referred to in subsection (1) does not constitute a breach or repudiation of any agreement entered into by the licensed deposit taker with any person.

Compare: 1989 No 157 s 133

323 Bank may sell, transfer, or dispose of property despite security interest

A Bank may exercise a power under section 319 or 320 in respect of any property despite the existence, and the terms and conditions, of any security interest over the property in favour of any other person.

Compare: 1989 No 157 s 134(1)

324 When proceeds of sale of licensed deposit taker's property must be paid to holder of security interest

- (1) This section applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any property under section 319(1); and
 - (b) the property is subject to a security interest (other than a security interest of the kind described in section 327).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or otherwise disposing of the property.

Compare: 1989 No 157 s 134(2)

325 When property continues to be subject to security interest

If the Bank sells, transfers, or otherwise disposes of any property of the licensed deposit taker to a body corporate formed and registered under section 320(1)(a) and the property is subject to a security interest, the property continues to be subject to the security interest.

Compare: 1989 No 157 s 134(3)

326 When proceeds of sale of shares or property of new body corporate must be paid to holder of security interest

- (1) This section applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any shares in B, and any property of B is subject to a security interest (other than a security interest of the kind described in section 327); or
 - (b) the Bank sells, transfers, or otherwise disposes of any property of B, and the property is subject to a security interest (other than a security interest of the kind described in section 327).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or disposing of the shares or property.
- (3) In this section, **B** is a body corporate that is formed and registered under section 320(1)(a).

Compare: 1989 No 157 s 134(4), (5)

327 Kind of security interest referred to in various sections

- (1) The kind of security interest referred to in sections 324 and 326 is a security interest that—
 - (a) is over all or any part of the licensed deposit taker’s or body corporate’s accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the licensed deposit taker entered resolution and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of the account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
 - (d) is not a security interest referred to in subsection (3).
- (2) In this section, **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (3) For the purposes of subsection (1)(d), the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—
 - (a) the counterparties to the derivative are—
 - (i) 2 qualifying counterparties; or
 - (ii) a qualifying counterparty and an overseas person; and
 - (b) before the exercise of rights to enforce the security interest, the collateral is delivered, transferred, held, registered, or otherwise designated so as to be in the possession or under the control of—
 - (i) the enforcing counterparty; or
 - (ii) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in subsection (3) have in that subsection the same meanings as in that section.
- (5) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (3)(b)

(and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (3)(b) of this section).

Compare: 1989 No 157 s 134(3)

328 Proof of transactions

- (1) Subsection (2) applies if—
 - (a) a person presents to a registrar an instrument transferring or otherwise disposing of any property of a licensed deposit taker or any shares in, or property of, a body corporate formed and registered under section 320(1)(a); and
 - (b) the instrument—
 - (i) is executed, or purports to be executed, by or on behalf of the licensed deposit taker or body corporate; and
 - (ii) contains a statement that the transfer or other disposition of the property of the deposit taker, or the shares in, or property of, the body corporate, is made under section 319 or 320.
- (2) The instrument is, in the absence of evidence to the contrary, sufficient proof that the transfer or other disposition is made under section 319 or 320.
- (3) If the resolution manager presents to a registrar a certificate signed by or on behalf of the resolution manager that states that the amount secured by a security interest over any property of a licensed deposit taker or a body corporate formed and registered under section 320(1)(a) has been paid, the certificate is, in the absence of evidence to the contrary, sufficient proof that the amount secured by the security interest has been repaid.
- (4) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 1989 No 157 s 135

329 Provisions applying where liabilities included in sale

- (1) If all or any part of a liability of a licensed deposit taker (A) is included in any sale, transfer, or other disposition under section 319,—
 - (a) A, as from the date of the sale, transfer, or other disposition, is relieved from all its obligations in respect of the liability, or part of it; and
 - (b) the person entitled to performance in respect of the liability may enforce performance of the liability or part of it against the person to whom the sale, transfer, or other disposition is made in the same manner and to the same extent as the person was entitled to enforce performance against A; and
 - (c) the inclusion of part of a liability does not relieve A from any obligation in respect of any part of the liability not included in the sale, transfer, or other disposition.

- (2) If all or any part of a liability of a body corporate formed and registered under section 314, or all or any part of a liability relating to the business carried on by an overseas person, is included in the sale, transfer, or other disposition, subsection (1)(a) does not relieve any overseas person from any obligation in respect of that liability.

Compare: 1989 No 157 s 137

Bank may suspend payment of money owing

330 Bank may suspend payment of money owing

- (1) The Bank may, in respect of a licensed deposit taker in resolution,—
- (a) suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person; and
 - (b) cancel the obligation to provide funding to any person.
- (2) This section applies despite the terms of any agreement.
- (3) A suspension or cancellation does not constitute a breach or repudiation of any agreement entered into by the deposit taker with any person.
- (4) This section is subject to sections 331, 332, and 421(1) to (3).

Compare: 1989 No 157 s 127(1), (2), (5)

331 Bank may not suspend or cancel obligation incurred after deposit taker enters resolution

Section 330 does not authorise the Bank to suspend the repayment of a deposit, or the payment of a debt, or the discharge of an obligation, or to cancel an obligation to provide funding, if the obligation to repay the deposit, or to pay the debt, or the obligation, is incurred by the licensed deposit taker after it enters resolution.

Compare: 1989 No 157 s 127(3)

332 Bank may not suspend payment of amount included in netted balance

- (1) Section 330 does not authorise the Bank to suspend the payment of an amount that would be included in the calculation of a netted balance in accordance with—
- (a) section 310C of the Companies Act 1993; or
 - (b) section 257 of the Insolvency Act 2006; or
 - (c) a designated FMI's rules.
- (2) However, section 330 applies to the payment of the netted balance.

Compare: 1989 No 157 s 127(4)

*Regulations may confer additional powers***333 Bank's or resolution manager's powers under regulations**

- (1) The Governor-General may, by Order in Council, make regulations conferring on the Bank or the resolution manager ancillary or additional powers necessary or desirable for the purposes of this subpart.
- (2) Regulations made under this section—
 - (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) must be confirmed by an Act (*see* subpart 3 of Part 5 of the Legislation Act 2019).

Compare: 1989 No 157 s 152

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

*Court may give directions***334 Court may give directions**

- (1) The court may, on an application made by the Bank or the resolution manager, give directions concerning any of the following:
 - (a) the business or property of a licensed deposit taker in resolution;
 - (b) the management or administration of that business or property;
 - (c) the exercise of any powers under this subpart.
- (2) Every person is bound by the directions.
- (3) The resolution manager may apply only with the prior approval of the Bank.

Compare: 1989 No 157 s 142

*Relationship between resolution and other legislation and processes***335 Application of certain provisions of Companies Act 1993**

- (1) Sections 275, 291A to 301, 310G, and 310I of the Companies Act 1993 apply to a licensed deposit taker (A) in resolution in all respects, and with all necessary modifications, as if—
 - (a) A were a company in liquidation under that Act; and
 - (b) the resolution manager were A's liquidator; and
 - (c) the time at which A entered resolution were the time at which the liquidation commenced.

- (2) Despite subsection (1), the following do not apply in relation to A:
- (a) sections 120, 207P to 209C, and 214 of the Companies Act 1993:
 - (b) sections 129 and 291A to 296D of the Companies Act 1993, to the extent that those sections would otherwise apply to a transaction or disposition under an agreement entered into after the licensed deposit taker enters into resolution.
- (3) The reference in section 275(4) of the Companies Act 1993 to clause 1(1)(a) of Schedule 7 of the Companies Act 1993 must be read as a reference to section 347(1) of this Act.

Compare: 1989 No 157 s 139

336 Application of other Acts

- (1) The following do not apply in relation to a licensed deposit taker in resolution:
- (a) the Receiverships Act 1993:
 - (b) sections 76 and 91 to 106 of the Building Societies Act 1965.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with the recommendation of the Bank, declare that the provisions of any Act that correspond with the provisions referred to in section 335(2) or subsection (1) do not apply (at all or to a specified extent) to a licensed deposit taker in resolution.
- (3) An Order in Council made under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 153(4), (5), (7), (8)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

337 Bank, resolution manager, and other persons are not directors under any legislation

For the purposes of this Act, any other legislation, or any other rule of law, the Bank, the resolution manager, or any other person must not be treated as being a director of a licensed deposit taker by reason only of the fact that the Bank, resolution manager, or other person is performing or exercising any functions, powers, or duties under this Part.

Compare: 1989 No 157 s 153(9)

338 Prior insolvency process must cease

- (1) If a licensed deposit taker (A) enters resolution and A is already being wound up or is already in liquidation, receivership, or voluntary administration,—
 - (a) the winding up, liquidation, receivership, or voluntary administration must cease for so long as A continues to be in resolution; and
 - (b) the person appointed as liquidator, receiver, or administrator is discharged.
- (2) If an Order in Council made under section 282(1) ends the resolution, the winding up, liquidation, receivership, or voluntary administration of A revives as if it had not ceased by reason of this section unless the order provides otherwise.
- (3) Subsection (2) applies subject to the terms and conditions specified in the order.
- (4) If the winding up, liquidation, receivership, or voluntary administration revives, the person specified in the order as such becomes, or resumes as, the liquidator, receiver, or administrator of A for the time being.

Compare: 1989 No 157 s 143

339 Continuation of resolution if restored

- (1) This section applies if a licensed deposit taker (A)—
 - (a) has been removed from the New Zealand register under section 317 of the Companies Act 1993 while in resolution; but
 - (b) is restored to the New Zealand register under section 328 of the Companies Act 1993.
- (2) A continues to be in resolution from the time A is restored.
- (3) However, subsection (2) does not apply if, before A is restored, the Bank publishes a notice in the *Gazette* that states that subsection (2) will not apply to A.

Compare: 1989 No 157 s 143A

*Auditors***340 Appointment of auditors**

- (1) The Bank must appoint 1 or more persons (whether as individuals or as the members of a firm) to be the auditor of a licensed deposit taker in resolution.
- (2) The person or persons that are appointed must be licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011).
- (3) An appointment must be for a term of up to 2 years, but a person appointed as auditor continues in office until a successor comes into office.
- (4) A person appointed as auditor is eligible for reappointment.

Compare: 1989 No 157 s 154(1)–(3)

341 Existing auditor ceases to hold office

A person holding office as auditor of a licensed deposit taker at the time that it enters resolution ceases to hold that office but may be appointed under section 340.

Compare: 1989 No 157 s 154(7)

342 Bank may remove auditor from office

- (1) The Bank may, at any time for just cause, remove an auditor from office.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Bank:
 - (a) inability to perform the functions of the office:
 - (b) bankruptcy:
 - (c) neglect of duty:
 - (d) misconduct.
- (3) The removal must be made by written notice to the auditor.
- (4) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 1989 No 157 s 154(4), (8)

343 Auditor's fees

An auditor must be paid the fees that are fixed by the Bank.

Compare: 1989 No 157 s 154(5)

344 Auditor's rights

- (1) An auditor has a right of access at all times to the information of the licensed deposit taker.
- (2) The auditor is entitled to require from the licensed deposit taker's directors and employees the information and explanations that the auditor thinks necessary for the performance of the auditor's duties.

Compare: 1989 No 157 s 154(6)

Offences

345 Offence to remove property

- (1) A person must not, without the resolution manager's consent, transfer or remove from New Zealand any property of a licensed deposit taker that is in resolution.
- (2) A person commits an offence if the person—
 - (a) contravenes subsection (1); and

- (b) knows that, or is reckless as to whether, it must obtain the resolution manager's consent.
- (3) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both);
 - (b) in any other case, to a fine not exceeding \$5,000,000.
- (4) This section does not prevent a court from issuing an injunction or making any order to prevent any property from being removed from New Zealand.
- (5) Subsection (1) is subject to section 421(1) to (3).

Compare: 1989 No 157 s 126

346 Offence to destroy, alter, or conceal records

- (1) A person commits an offence against this Act if,—
 - (a) with intent to defeat the purposes of this Part, they destroy, alter, or conceal any information of, or relating to, a licensed deposit taker in resolution; or
 - (b) without reasonable excuse, they fail or refuse to answer, to the best of their knowledge and ability, any question that they are asked by or on behalf of the Bank or the resolution manager in relation to any such information or any property; or
 - (c) they wilfully give a false or misleading answer to that question.
- (2) A person who commits an offence under subsection (1) is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in any other case, to a fine not exceeding \$2,500,000.
- (3) If, in any prosecution for an offence under this section, it is proved that the person charged with the offence destroyed, altered, or concealed any information of the kind referred to in subsection (1), it must be presumed, in the absence of evidence to the contrary, that the person did so with intent to defeat the purposes of this Part.

Compare: 1989 No 157 s 151

Expenses

347 Expenses of resolution

- (1) All costs, charges, and expenses properly incurred by the Bank or the resolution manager in the performance or exercise of the Bank's or the resolution manager's functions, duties, and powers under this subpart and subparts 4, 5, 7, and 8 are payable out of the property of any 1 or more of the following in priority to all other claims:

- (a) the licensed deposit taker:
 - (b) a subsidiary or other associated person that is in resolution:
 - (c) a body corporate formed and registered under section 314 or 320.
- (2) The Bank or the resolution manager (as the case may be) may apportion the costs, charges, and expenses between those persons in the manner that the Bank or the resolution manager thinks fit.
- Compare: 1989 No 157 s 148

Subsidiaries

348 Rules relating to subsidiaries do not apply

- (1) Nothing in subpart 8 of Part 2 of the Reserve Bank of New Zealand Act 2021 (subsidiaries) applies to anything the Bank does in the performance or exercise of its functions, powers, or duties under this subpart and subparts 4, 5, 7, and 8.
- (2) No body corporate formed and registered in accordance with this subpart is a subsidiary of the Bank under the Reserve Bank of New Zealand Act 2021.

Subpart 7—Minister may give directions

349 When this subpart applies

- (1) This subpart applies if—
- (a) either or both of the following apply:
 - (i) the Bank proposes to exercise a power under this Part in a particular manner in relation to a licensed deposit taker (A) that is in resolution:
 - (ii) the Minister considers that the Bank should exercise a power under this Part in a particular manner in relation to A; and
 - (b) public money is involved in the resolution; and
 - (c) the Minister is satisfied that,—
 - (i) in the case of paragraph (a)(i), the exercise of the power in the manner referred to in that subparagraph would present a material risk to the prudent management of public money:
 - (ii) in the case of paragraph (a)(ii), the exercise of the power in the manner referred to in that subparagraph would reduce a material risk to the prudent management of public money.
- (2) In this subpart, **public money is involved** in a resolution if the Crown has done any of the following in connection with dealing with A's financial distress or other difficulties:
- (a) incurred expenses or capital expenditure or made a capital injection:
 - (b) given a guarantee or an indemnity:

- (c) incurred a liability or made a commitment.

Example

Public money is involved in relation to a Crown guarantee or indemnity, a Crown loan, or a Crown acquisition of A's shares.

- (3) However, public money is not involved in a resolution merely because—
- (a) the Bank uses its own financial resources in the resolution; or
 - (b) money is applied under subpart 5 of Part 6 (use of the fund to support resolution actions); or
 - (c) grants or advances are made under subpart 8 of Part 6 (deficiency in fund); or
 - (d) compensation is paid under subpart 9 (compensation for pre-resolution creditors or shareholders that are worse off).

350 Minister may direct Bank relating to exercise of resolution power

The Minister may direct the Bank to do 1 or more of the following:

- (a) not exercise a power in the manner referred to in section 349(1)(a)(i):
- (b) exercise a power in the manner referred to in section 349(1)(a)(i) only on the terms and conditions that are specified in the direction:
- (c) exercise a power in the manner referred to in section 349(1)(a)(ii):
- (d) exercise a power in the manner referred to in section 349(1)(a)(ii) on the terms and conditions that are specified in the direction:
- (e) have regard to the matters specified in the direction before exercising a power:
- (f) take any other action that is specified in the direction to avoid or minimise, or otherwise manage, the risk referred to in section 349(1)(c).

351 Procedural requirements

- (1) The Minister may give a direction under this subpart only if the Minister is satisfied that—
- (a) giving the direction is necessary or desirable for the purpose of avoiding or minimising, or otherwise managing, the risk referred to in section 349(1)(c); and
 - (b) giving the direction is the most appropriate way of avoiding or minimising, or otherwise managing, the risk; and
 - (c) the direction is not inconsistent with any of the purposes in section 259(1)(a), (b), and (c); and
 - (d) the extent of the direction is not broader than is reasonably necessary to address the matters that gave rise to the direction.

- (2) This section does not limit section 174 of the Reserve Bank of New Zealand Act 2021, which imposes additional procedural requirements for the direction.

Subpart 8—Resolution manager

Key duties

352 Resolution manager must act to further purposes of this Part

A resolution manager must perform or exercise their functions, powers, and duties efficiently and effectively in a way that furthers the purposes set out in section 259.

353 Resolution manager must comply with directions of Bank

A resolution manager must comply with any directions given in writing by the Bank relating to the manager's performance or exercise of any functions, powers, or duties.

Compare: 1989 No 157 s 120

354 Resolution manager must consult and have regard to Bank advice

A resolution manager must, when performing or exercising any functions, powers, or duties,—

- (a) consult the Bank to the extent required by the Bank; and
- (b) have regard to the Bank's advice.

355 Resolution manager must regularly report as required by Bank

A resolution manager must, in the manner specified by the Bank, provide the reports that the Bank may require about the state of the affairs, business, and resolution of the licensed deposit taker in resolution.

356 Resolution manager must report annually on conduct of resolution

A resolution manager must, within 4 months after the balance date of a licensed deposit taker (A) that is in resolution,—

- (a) prepare a report on the conduct of the resolution of A and of its associated persons during the accounting period ending on that date; and
- (b) lodge the report with the Registrar of Financial Service Providers together with the documents that are lodged under section 461H of the FMCA in relation to A; and
- (c) give the Bank a copy of those documents.

Appointment of resolution manager

357 Bank may appoint resolution manager

- (1) The Bank may appoint 1 or more persons as resolution managers.

- (2) The Bank makes an appointment by—
 - (a) giving notice of the appointment to the person who is appointed; and
 - (b) publishing the notice in the *Gazette*.
- (3) The notice must state the date on which, and time at which, the appointment takes effect.
- (4) A resolution manager must be an employee of the Bank or any other person that the Bank is satisfied is suitably qualified.
- (5) Nothing in this subpart prevents the Bank from appointing a person as resolution manager to replace another resolution manager whose term of appointment has expired or who has had their appointment terminated, has resigned, or has died.

358 Bank may appoint itself as resolution manager

The Bank may appoint itself as the resolution manager (or one of the resolution managers) under section 357.

359 Bank holds office as resolution manager if no other person holds office

- (1) If a licensed deposit taker (A) is in resolution but no other person holds office as resolution manager in respect of A, the Bank holds office as the resolution manager.
- (2) This section does not limit the Bank's powers under section 357.

360 How this Part applies if Bank holds office as resolution manager

- (1) If the Bank holds office as resolution manager,—
 - (a) the duty for the resolution manager to report to, obtain the consent of, or consult the Bank does not apply; and
 - (b) the duty on the Bank (as resolution authority) to supervise the resolution manager does not apply; and
 - (c) this Part applies with all other necessary modifications.
- (2) If another person also holds office as resolution manager, the duties referred to in subsection (1)(a) and (b) continue to apply in relation to that person.

361 How 2 or more resolution managers may act

- (1) If 2 or more persons hold office as resolution manager, a notice under section 357 must state whether the functions, powers, or duties of the resolution manager must be performed or exercised by those persons acting together or may be performed or exercised individually.
- (2) This section applies whether or not the functions, powers, or duties are performed or exercised under a delegation under section 74 of the Reserve Bank of New Zealand Act 2021.

362 Bank may terminate appointment of resolution manager

- (1) The Bank may, at any time and for any reason, terminate the appointment of a resolution manager.
- (2) The termination must be made by written notice to the resolution manager.
- (3) The notice must—
 - (a) state the date on which the termination takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.
- (4) If the person holds office as resolution manager for 2 or more persons, the Bank may terminate the appointment in respect of all or any of those persons.

Compare: 1989 No 157 s 141(1)

363 Resolution manager may resign

A resolution manager may resign office by notice in writing to the Bank.

Compare: 1989 No 157 s 141(2)

364 Bank may appoint replacement

If the appointment of a resolution manager is terminated under section 362 or a resolution manager resigns office or dies, the Bank may, under section 357, appoint a person to replace that resolution manager.

Compare: 1989 No 157 s 141(3), (3A)

365 Resolution manager continues in office

- (1) A resolution manager (A) continues in office until a successor is appointed despite—
 - (a) their resignation; or
 - (b) the expiry of their period of appointment.
- (2) Subsection (1) does not apply if the Bank informs A by written notice that no successor is to be appointed at that time.

Compare: 1989 No 157 s 141(4)

366 Licensed deposit taker continues to be in resolution

A licensed deposit taker continues to be in resolution even though the term of office of a resolution manager who is acting in relation to the resolution has expired or the resolution manager—

- (a) has had their appointment terminated; or
- (b) has resigned from office; or
- (c) has died; or
- (d) has ceased to hold office because of the expiry of their period of appointment; or

(e) has otherwise ceased to hold office.

Compare: 1989 No 157 s 141(5)

Subpart 9—No creditor or shareholder worse off

367 Interpretation in this subpart

In this subpart,—

affected entity—

- (a) means a licensed deposit taker, or an associated person of a licensed deposit taker, that is or has been in resolution; but
- (b) does not include—
 - (i) an overseas licensed deposit taker; or
 - (ii) an associated person of a licensed deposit taker that is an overseas person

creditor has the same meaning as in section 227 of the Companies Act 1993

pre-resolution creditor, in relation to an affected entity, means a person who was a creditor of the entity immediately before it entered into resolution

pre-resolution shareholder,—

- (a) in relation to an affected entity that is a company within the meaning of the Companies Act 1993, means a person who was a shareholder of the affected entity (within the meaning of section 96 of that Act) immediately before it entered into resolution:
- (b) in relation to an affected entity that is a building society, means a person who was a member of the affected entity (within the meaning of section 2 of the Building Societies Act 1965) immediately before it entered into resolution:
- (c) in relation to an affected entity that is a credit union, means a person who was a member of the affected entity (within the meaning of the Friendly Societies and Credit Unions Act 1982) immediately before it entered into resolution:
- (d) in relation to an affected entity that is not a company, a building society, or a credit union, means a person who was of a kind prescribed by the regulations immediately before the affected entity entered into resolution

valuer, in relation to an affected entity, means the person or persons appointed under section 369.

368 Eligibility for compensation under this subpart

- (1) A pre-resolution creditor or pre-resolution shareholder of an affected entity is eligible for a payment of compensation under this subpart if subsection (2) applies.

- (2) This subsection applies if the creditor or shareholder has received, is receiving, or is likely to receive, as a result of the resolution of the entity, less favourable treatment than would have been the case had a liquidation of the entity under New Zealand law commenced immediately before the entity entered into resolution.
- (3) The amount of compensation is the amount calculated under sections 373 to 376.

Valuer's role

369 Minister must appoint valuer

- (1) The Minister must, as soon as is reasonably practicable after an affected entity enters into resolution, appoint 1 or more individuals as valuer in relation to the entity for the purposes of this subpart.
- (2) The Minister makes an appointment by giving notice of the appointment to the appointee.
- (3) The notice must state the date on which, and time at which, the appointment takes effect.
- (4) The Minister may appoint the same person or different persons as the valuer for a licensed deposit taker and any of its associated persons.
- (5) Nothing in this subpart prevents the Minister from appointing a person as valuer to replace another valuer who has had their appointment terminated, has resigned, or has died.
- (6) *See also* sections 395 to 397, which relate to the appointment of a valuer.

370 Functions of valuer

The functions of a valuer are to—

- (a) make a valuation in relation to an affected entity; and
- (b) decide whether any pre-resolution creditor or pre-resolution shareholder is eligible for a payment of compensation under this subpart and, if so, the amount of that compensation.

371 Valuer must act in manner prescribed by regulations

- (1) A valuer must perform or exercise the valuer's functions, powers, and duties in the manner prescribed by the regulations.
- (2) The regulations may, in particular, require a valuer to do 1 or more of the following:
 - (a) to apply, or not to apply, specified methods of valuation:
 - (b) to apply specified principles:
 - (c) to assess values or average values at specified dates or over specified periods:

- (d) to take specified matters into account in a specified manner:
 - (e) to disregard specified matters:
 - (f) not to take specified matters into account.
- (3) The regulations may also require or permit a valuer to make assumptions.
- (4) The regulations may prescribe—
- (a) the manner in which the Bank, pre-resolution creditors, pre-resolution shareholders, or other persons may or must give information, or submit claims, to the valuer; and
 - (b) the manner in which the valuer must or may deal with the information and those claims.
- (5) Subsections (2) to (4) do not limit subsection (1).

372 Valuer must prepare list of pre-resolution creditors and shareholders

A valuer must prepare a list of every known pre-resolution creditor or pre-resolution shareholder of the affected entity and, if known, each creditor's or shareholder's address for communications (which may be an electronic address).

How valuer must determine compensation

373 Valuer must determine compensation by reference to difference between liquidation value and resolution value

- (1) A valuer must assess—
- Liquidation value*
 - (a) what each pre-resolution creditor or pre-resolution shareholder (or class of those persons) would have been likely to receive if a liquidation of the affected entity under New Zealand law had commenced immediately before it entered into resolution; and
 - Resolution value*
 - (b) what each pre-resolution creditor or pre-resolution shareholder (or class of those persons) has received, is receiving, or is likely to receive as a result of the resolution.
- (2) If the valuer considers that, in relation to a pre-resolution creditor or pre-resolution shareholder (or class of those persons), the resolution value is less favourable than the liquidation value, the valuer must determine the compensation payable to the pre-resolution creditor or pre-resolution shareholder (or class).
- (3) The valuer must determine the amount of compensation payable by reference to the difference in treatment assessed under subsection (2) and on the basis of the fair and equitable value of that difference in treatment.
- (4) The valuer's assessment under subsection (1) must not take into account any debt owing by the affected entity to a pre-resolution creditor or pre-resolution

shareholder if the debt was incurred by the affected entity after it entered resolution.

(5) In this subpart,—

liquidation value means the amount assessed under subsection (1)(a)

resolution value means the amount assessed under subsection (1)(b).

(6) This section does not limit section 371.

374 Liquidation value

(1) The following apply to a valuer's assessment of the liquidation value:

(a) the valuer must assume that the Bank and the Crown do not, directly or indirectly, provide any financial support or assistance in connection with the liquidation:

(b) the valuer must discount the liquidation value back to the time that the affected entity entered into resolution.

(2) This section does not limit section 371.

375 Resolution value

(1) The valuer must, when assessing the resolution value, discount the resolution value back to the time that the affected entity entered into resolution.

(2) This section does not limit section 371.

376 Discount rate

For the purpose of sections 374(1)(b) and 375, the valuer must apply—

(a) a discount rate that—

(i) is set out in, or determined in accordance with, the regulations; or

(ii) if subparagraph (i) does not apply, is determined by the valuer (on the basis of assumptions referred to in paragraph (b)); and

(b) any assumptions determined by the valuer that—

(i) are not inconsistent with any assumptions prescribed by the regulations; and

(ii) are fair and reasonable in the circumstances.

Valuer's report

377 Valuer's draft report

(1) After acting under sections 371 to 376, the valuer must prepare a draft report setting out—

(a) the valuer's decision on—

- (i) whether each pre-resolution creditor or pre-resolution shareholder of the affected entity (or each class of those persons) is eligible for compensation under this subpart; and
 - (ii) the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder (or each class of those persons); and
 - (b) a description of the methods, principles, and assumptions that the valuer has applied, and how they have been applied, in sufficient detail to enable the Minister and the Bank to make an informed assessment of the draft report and the valuer's decision; and
 - (c) the information (if any) that is prescribed by the regulations.
- (2) The valuer may set out an amount of compensation by specifying the manner in which the amount must be calculated.

378 Valuer must give draft report to Minister and Bank

The valuer must provide the draft report to the Minister and the Bank as soon as is reasonably practicable after it is prepared.

379 Minister or Bank may require valuer to reconsider

- (1) This section applies if, after receiving the draft report, the Minister or the Bank is of the view that—
- (a) the valuer's decision has not been made in accordance with sections 371 to 376; or
 - (b) the valuation report was not prepared in accordance with section 377; or
 - (c) the valuer should have had regard to any additional information not taken into account in the draft report.
- (2) The Minister or the Bank (or both) may, by notice, require the valuer to reconsider the draft report or any aspect of the draft report in the manner that the Minister or the Bank specifies in the notice.

380 Valuer must finalise and publish report

- (1) If a notice is given under section 379, the valuer must—
- (a) reconsider the draft report or any aspect of the draft report in the manner specified in the notice; and
 - (b) finalise the report; and
 - (c) provide the finalised report to the Minister and the Bank.
- (2) If no notice is given under section 379 within 20 working days after the draft report is given under section 378, the valuer must—
- (a) finalise the report; and
 - (b) provide the finalised report to the Minister and the Bank.

- (3) The Bank must publish the report on its Internet site.
- (4) The regulations may require or permit the Bank to redact information from the copy of the report that is published (for example, to protect privacy, confidentiality, or commercially sensitive information).
- (5) The Bank may also redact from the copy of the report that is published any information if the Bank considers there would be a good reason for withholding the information under the Official Information Act 1982 if a request for that information were made under that Act.

Compensation notice and payments

381 Valuer must send compensation notice

- (1) The valuer must, within 20 working days after the copy of the finalised report is published, send to each pre-resolution creditor and each pre-resolution shareholder a notice (a **compensation notice**).
- (2) A compensation notice sent to a pre-resolution creditor or pre-resolution shareholder (A) must set out—
 - (a) the valuer’s decision on—
 - (i) whether A is eligible for compensation; and
 - (ii) the amount of compensation payable to A (if any); and
 - (b) if compensation is payable to A, information from the Bank about how the compensation will be paid, including information about anything A must do before the compensation is paid (for example, a requirement to give to the Bank A’s account details); and
 - (c) a brief description of A’s appeal rights under section 391, including the period within which an appeal may be brought; and
 - (d) all other information that is prescribed by the regulations (if any).

382 Bank must make available public information if compensation notice cannot be sent

- (1) Section 381 does not apply if it is not reasonably practicable to send a compensation notice to a pre-resolution creditor or a pre-resolution shareholder (or to a class of those persons).
- (2) If subsection (1) is relied on, the Bank must instead make the information that is prescribed by the regulations available to the public in the manner prescribed by those regulations.

383 Bank must manage and administer payments of compensation

The Bank must manage and administer payments of compensation under this subpart.

384 Bank must pay in accordance with regulations

- (1) This section applies if—
 - (a) the valuer has sent a compensation notice to a person (**A**) that specifies that A is eligible for compensation of a particular amount; and
 - (b) either—
 - (i) no appeal has been brought under section 391 in relation to A within the period specified in section 392; or
 - (ii) such an appeal has been brought, and it has been determined by, or under, an order of the court that A is eligible for compensation of a particular amount.
- (2) The Bank must pay the compensation to, or on account of, A—
 - (a) in the manner prescribed by the regulations; and
 - (b) otherwise in the manner that the Bank thinks fit.
- (3) The amount of compensation is—
 - (a) the amount determined by the valuer (unless paragraph (b) applies); or
 - (b) the amount determined by, or under, an order of the court.
- (4) The Bank's power to decide the manner in which compensation is paid includes deciding to pay it to a person to hold on behalf of A (whether or not on trust).

385 Crown must provide money necessary to pay compensation

- (1) This section applies if the maximum amount payable under subpart 5 of Part 6 (use of fund to support resolution) is not sufficient to pay the entitlements to compensation under this subpart.
- (2) The Minister must provide to the Bank out of public money, without further appropriation than this section, the money that is necessary to meet the deficiency.

386 Transfer of entitlement by assignment or operation of law

- (1) This section applies if—
 - (a) a person (**A**) is—
 - (i) a pre-resolution creditor who has or may have an entitlement to compensation under this subpart in respect of a debt owing by the affected entity; or
 - (ii) a pre-resolution shareholder who has or may have an entitlement to compensation under this subpart in respect of shares issued by the affected entity; and
 - (b) the debt or the shares are transferred by assignment or by operation of law to a person (**B**); and

- (c) the transfer occurs before the compensation is paid; and
 - (d) the Bank has been given notice of the transfer in the prescribed manner before the compensation is paid.
- (2) If this section applies,—
- (a) A's entitlement (if any) to compensation under this subpart in respect of the transferred debt or shares is transferred to B; and
 - (b) B must be treated as being a pre-resolution creditor or shareholder to the extent that A's entitlement has been transferred.
- (3) However, this section does not apply—
- (a) if an agreement between A and B provides otherwise; or
 - (b) in the circumstances prescribed by the regulations.

Valuer's information-gathering power

387 Valuer may require person to supply information for purposes of this subpart

- (1) If the valuer considers it necessary or desirable for the purposes of performing or exercising the valuer's functions, powers, or duties under this subpart, the valuer may, by notice to any relevant person, require the person to do 1 or more of the following:
- (a) give to the valuer any information, or class of information, that is specified in the notice:
 - (b) produce for inspection any documents, or class of documents, that is specified in the notice:
 - (c) if necessary, reproduce, or assist in reproducing, in usable form, information recorded or stored in those documents.
- (2) In this section, **relevant person** means any of the following:
- (a) the Bank:
 - (b) the affected entity, any associated person of the affected entity, or any creditor or shareholder of the affected entity:
 - (c) any financial service provider.
- (3) The relevant person must comply with a requirement under subsection (1) within the period, and otherwise in the manner, that is specified in the notice.
- (4) The valuer may take copies of any documents produced for inspection under subsection (1).

388 Offence to fail to supply information

- (1) A person referred to in section 387(2)(b) or (c) commits an offence if they refuse or fail, without reasonable excuse, to comply with a notice under section 387.

- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in any other case, a fine not exceeding \$500,000.

389 Person required to give information has same privileges as witnesses in court

A person who is required to give information under this subpart has the same privileges in relation to that duty as witnesses have in a proceeding before a court.

390 Use of information and confidentiality

- (1) A valuer who, in their capacity as valuer, has information that would not otherwise be available to them must not make use of or act on the information, except—
- (a) for the purposes of performing or exercising the valuer's functions, powers, and duties; or
 - (b) as required by law.
- (2) Subpart 3 of Part 8 (confidentiality) applies to information given to a valuer under this subpart (and to information derived from or based on that information)—
- (a) as if references to the Bank were references to the valuer; and
 - (b) with all other necessary modifications.
- (3) A valuer commits an offence if they intentionally or recklessly—
- (a) contravene subsection (1); or
 - (b) disclose information in contravention of section 442 (as applied by this section).
- (4) A valuer who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

Appeals

391 Appeal against valuer's decision on question of law

- (1) If the Minister or the Bank considers (or both consider) that any of the following decisions of a valuer is wrong in law, the Minister or the Bank (or both) may appeal to the court against the decision on a question of law only:
- (a) a decision on whether a person, a class of persons, or persons generally are eligible for compensation;
 - (b) a decision on the amount of compensation to be paid to all or any of those persons.

- (2) If a person (A) considers that either of the following decisions of the valuer is wrong in law, A may appeal to the court against the decision on a question of law only:
- (a) a decision on whether A is eligible for compensation:
 - (b) a decision on the amount of compensation to be paid to A.

392 Time for bringing appeal

An appeal must be brought within 3 months after the date on which the finalised report is first published under section 380.

393 Appeals to Court of Appeal

- (1) A party to an appeal under section 391 may appeal to the Court of Appeal, with the leave of the Court of Appeal, against any determination of the High Court on a question of law arising in that appeal.
- (2) The Court of Appeal hearing an appeal under this section has the same power to adjudicate on the appeal as the High Court had.

394 No limit on judicial review

Nothing in this subpart limits or affects the Judicial Review Procedure Act 2016.

Appointment of valuer

395 Who may be appointed as valuer

- (1) A person may be appointed as valuer in relation to an affected entity (A) if—
 - (a) the Minister is satisfied that the person—
 - (i) has the knowledge, skills, and experience that are prescribed by the regulations; and
 - (ii) meets the independence requirements; and
 - (b) the person is not disqualified under subsection (3).
- (2) The **independence requirements** are as follows:
 - (a) a requirement that the person has not, within the 2 years immediately before A enters into resolution, been any of the following:
 - (i) a member of the board of the Bank;
 - (ii) a member of the monetary policy committee;
 - (iii) an employee of the Bank or of a subsidiary of the Bank;
 - (b) the requirements about independence from the Bank that are prescribed by the regulations.
- (3) The following persons are disqualified from being appointed or acting as valuer in relation to A:

- (a) a person who has, within the 2 years immediately before A enters into resolution, been a director, an auditor, or a receiver of A or of an associated person:
 - (b) a person who has, or whose firm has, within the 2 years immediately before A enters into resolution,—
 - (i) provided professional services to A; or
 - (ii) had a continuing business relationship with A, its majority shareholder, or any of its directors, or with any of A's shareholders that (under its constitution or any other agreement) have a power to appoint or remove a director of A:
 - (c) a person of any class that is prescribed by the regulations.
- (4) A person is not disqualified under subsection (3)(b)—
- (a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or of the person's firm,—
 - (i) by, or at the instigation of, A or a creditor or other party that has an actual or potential financial interest in A; and
 - (ii) to investigate or to advise on the solvency of A or to monitor the affairs of A; or
 - (b) if the Minister consents to the appointment of the person.
- (5) The Minister must, before giving their consent under subsection (4)(b), be satisfied that the provision of the professional services, or the continuing business relationship, will not have a materially adverse effect on the person's ability to perform or exercise their functions, powers, or duties.

396 Application of this subpart to joint valuers

If a notice or notices under section 369 appoint 2 or more persons as valuer in relation to an entity, the Minister must state in the notice or notices whether the functions, powers, or duties imposed or conferred by this subpart must be performed or exercised by those persons acting together or may be performed or exercised individually.

397 Appointment notice must be published

- (1) The Minister must publish the notice of appointment of a valuer in the *Gazette*.
- (2) The Bank must publish the notice of appointment on the Bank's Internet site.

398 Minister may terminate appointment of valuer

- (1) The Minister may, at any time for just cause and after consulting the Bank, terminate the appointment of a valuer.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Minister:
 - (a) inability to perform the functions of the office:

- (b) bankruptcy;
 - (c) neglect of duty;
 - (d) being disqualified for appointment under section 395;
 - (e) serious misconduct.
- (3) The termination must be made by giving written notice to the valuer.
- (4) The notice must—
- (a) state the date on which the termination takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 1989 No 157 s 141

399 Valuer may resign

A valuer may resign office by giving written notice to the Minister.

Compare: 1989 No 157 s 141(2)

400 Valuer continues in office

- (1) A valuer (A) continues in office until a successor is appointed despite their resignation.
- (2) Subsection (1) does not apply if the Minister informs A by written notice that no successor is to be appointed at that time.

401 Valuer's costs, charges, and expenses

The Minister may pay to a valuer (A), out of a Crown Bank Account, the amounts that the Minister thinks fit in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, A.

402 Valuer's duties in relation to records

- (1) A valuer must—
- (a) keep records and other documents relating to the performance or exercise of their functions, powers, or duties; and
 - (b) permit those records and other documents to be inspected by—
 - (i) the Bank; and
 - (ii) if the court so orders, a pre-resolution creditor or shareholder; and
 - (c) keep the records and other documents for not less than 7 years after the end date (or any longer period specified in a notice referred to in subsection (2)).
- (2) The Bank may, by notice given to the valuer before or after the end of the resolution, require any records and documents to be retained for longer than 7 years after the end date.

- (3) A valuer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (4) The **end date** is the earlier of the following:
- (a) the date of the valuer's finalised report under section 380;
 - (b) the date on which the valuer ceases to hold office under this subpart.

Subpart 10—Covered bonds

Interpretation relating to covered bonds

403 Interpretation

In this subpart, unless the context otherwise requires,—

cover pool, in relation to a covered bond programme, means property that—

- (a) is owned by the relevant covered bond SPV; and
- (b) secures the obligations of that SPV under the covered bond programme

cover pool monitor means a person that meets the requirements of section 419(1)

covered bond means a bond, note, or other debt security that has the following features:

- (a) it represents an unsecured obligation of the issuer; and
- (b) the principal and interest owing under the bond, note, or other debt security are guaranteed by a covered bond SPV; and
- (c) the obligations under that guarantee are secured by property that is owned by that SPV

covered bond programme means any programme of covered bonds under which, on the security of a single cover pool, covered bonds may be issued

covered bond SPV has the meaning given to it by section 404

issuer has the meaning given to it by section 405

own includes to hold a beneficial, or legal, interest or entitlement

registered covered bond programme means a covered bond programme that has been registered under section 412.

Compare: 1989 No 157 s 139A

404 Meaning of covered bond SPV

In this subpart, **covered bond SPV** means, in relation to a covered bond programme, a person that—

- (a) is, or will be, the owner of property that has been, or will be, sold, assigned, or otherwise transferred to it by, or on behalf of, an issuer or an associated person of an issuer; and

- (b) has granted, or may grant, a security interest in the property for the benefit of the secured creditors under the covered bond programme; and
- (c) carries on a business of acting as covered bond guarantor under the covered bond programme (including any business incidental to that purpose); and
- (d) (other than as described in paragraph (c)) does not carry on any other kind of business.

Compare: 1989 No 157 s 139B

405 Meaning of issuer

- (1) For the purposes of this subpart, **issuer**—
 - (a) means—
 - (i) a licensed deposit taker that issues or intends to issue covered bonds, or guarantees covered bonds;
 - (ii) an entity, or a member of a class of entities, specified in the regulations that issues or intends to issue covered bonds, or guarantees such covered bonds; and
 - (b) includes a deposit taker referred to in paragraph (a)(i) that—
 - (i) has had its licence cancelled under subpart 6 of Part 2; and
 - (ii) has a registered covered bond programme.
- (2) However, if an issuer (**issuer A**) transfers all of the rights and obligations relating to a covered bond programme to another issuer (**issuer B**), issuer B is, from the time of the transfer, the issuer for the purposes of this subpart.
- (3) Subsection (2) does not affect the rights or obligations of issuer A before the transfer.

Compare: 1989 No 157 s 139C

Main duties of issuer

406 Issuer may issue covered bond only under registered programme

- (1) An issuer must not issue, or permit the issue of, a covered bond other than under a registered covered bond programme.
- (2) An issuer that contravenes subsection (1) commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$100,000;
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Compare: 1989 No 157 s 139E(4)

*Registration of covered bond programmes***407 Register of registered covered bond programmes**

- (1) The Bank must keep a public register of registered covered bond programmes.
- (2) The Bank—
 - (a) must determine the form and content of the register and may amend that form and content as it considers necessary; and
 - (b) may, based on the property in, or that may be included in, the relevant cover pool, designate registered covered bond programmes to particular classes of registered covered bond programmes, as specified by the Bank.
- (3) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

Compare: 1989 No 157 s 139D(1)–(3)

408 When programme must remain or be removed from register

- (1) A registered covered bond programme must remain on the register despite—
 - (a) any defects in the registration process; or
 - (b) any failure by an issuer to comply with section 416.
- (2) However, the Bank may remove a registered covered bond programme from the register—
 - (a) if—
 - (i) all obligations under that programme have been fulfilled; or
 - (ii) the security interest over the cover pool has been enforced; or
 - (iii) the issuer has requested the removal; and
 - (b) if, in all cases, the Bank has received evidence, acceptable to the Bank, that both the relevant bond trustee and security trustee consent to the removal.

Compare: 1989 No 157 s 139D(4), (5)

409 Other matters relating to registration

- (1) Registration occurs at the time and date that the Bank enters the details relating to the covered bond programme on the register.
- (2) A defect in the registration process of a covered bond programme does not affect a person's ability to enforce their rights in relation to the programme or any covered bond issued under the programme.
- (3) The failure of an issuer to register a covered bond programme or to comply with any requirement under section 416 does not affect any other person's abil-

ity to enforce their rights in relation to the programme or any covered bond issued under the programme.

Compare: 1989 No 157 s 139D(6)

410 Application for registration of covered bond programme

- (1) Only an issuer may apply to the Bank to register a covered bond programme.
- (2) An application must be made in the manner specified by the Bank.

Compare: 1989 No 157 s 139E(1), (2)

411 Determination of application for registration of covered bond programme

- (1) The Bank must not register a covered bond programme unless it is satisfied that the requirements set out in subsection (2) are met.
- (2) The requirements are as follows:
 - (a) that the cover pool property is, or will be, owned by an identified covered bond SPV that—
 - (i) is a company (within the meaning given in section 2(1) of the Companies Act 1993); or
 - (ii) is a person or partnership specified in the regulations; or
 - (iii) is a member of a class of persons or partnerships specified in the regulations; and
 - (b) that a cover pool monitor has been appointed; and
 - (c) that a register of cover pool property will be maintained; and
 - (d) that the covered bond programme specifies, or refers to documents that specify, procedures and internal controls that ensure—
 - (i) the up-to-date and accurate keeping of the register; and
 - (ii) that the property in the cover pool remains consistent with any class designation under section 407(2)(b); and
 - (e) that the covered bond programme specifies a test, or tests, to determine, in accordance with any procedures specified in the programme, whether the value of the cover pool property is at least equal to the principal amount outstanding on the covered bonds; and
 - (f) that the covered bond programme provides for the covered bond SPV to perform, or arrange to have performed on its behalf, the requirements of section 416(1)(a) and (b)(i)—
 - (i) in the event that any amounts become due and payable by the covered bond SPV under the covered bond programme; and
 - (ii) until the security interest over the cover pool property has been enforced; and

- (g) that the issuer is in compliance with all other requirements imposed in relation to covered bonds by, or under, all applicable standards.

Compare: 1989 No 157 s 139F

412 Bank must approve or decline application

- (1) Having considered an application made under section 410(2), the Bank must either approve or decline the application.
- (2) If the Bank is satisfied that an issuer meets the requirements of section 411(2), the Bank must approve the application and register the covered bond programme.
- (3) Otherwise, the Bank must decline the application.

Compare: 1989 No 157 s 139G(1)–(3)

413 Bank must give notice of approval

If the Bank approves the application, it must give notice of its decision to the issuer within 60 working days after receiving all of the information required by the Bank to determine the application.

Compare: 1989 No 157 s 139G(4)

414 Bank must give notice of proposal to decline application

If the Bank proposes to decline the application, the Bank must, within 60 working days after receiving all of the information required to determine the application,—

- (a) give the issuer notice of the proposed decision and the reasons for it; and
- (b) invite the issuer to provide, within 10 working days after the date of the notice, submissions or further information in response to the proposed decision; and
- (c) have regard to any submissions and further information it receives from the issuer; and
- (d) give notice of its final decision to the issuer within 5 working days after the period specified in paragraph (b) (whether or not the Bank receives any submissions or further information).

Compare: 1989 No 157 s 139G(5)

415 Bank and issuer may agree to modify time limits

The Bank and the issuer may agree to modify the time limits specified in sections 413 and 414.

Compare: 1989 No 157 s 139G(6)

Ongoing duties of issuer

416 Requirements relating to registered covered bond programmes

- (1) Every issuer must, in relation to a registered covered bond programme,—
- (a) ensure that the test or tests specified in section 411(2)(e) are carried out at intervals of not more than 12 months and notify the Bank if the result of the test or tests is that the value of the cover pool property is less than the principal amount outstanding on the covered bonds; and
 - (b) ensure that—
 - (i) a register of cover pool property is maintained; and
 - (ii) the issuer complies with the procedures and internal controls referred to in section 411(2)(d); and
 - (c) notify the Bank—
 - (i) of every covered bond issued; and
 - (ii) of any material changes to the registered covered bond programme that would be likely to result in the registered covered bond programme failing to comply with the requirements of section 411(2); and
 - (iii) if the covered bond programme or the cover pool no longer complies with any class designation under section 407(2)(b); and
 - (d) provide the Bank with any further information it requests in relation to the covered bond programme; and
 - (e) ensure that—
 - (i) the registered covered bond programme complies with the requirements of section 411(2); and
 - (ii) the reports referred to in section 420(b) are provided to any bond trustee and security trustee appointed under the covered bond programme; and
 - (iii) the Bank is provided with a copy of every report prepared by the cover pool monitor in accordance with section 420(c) and (d); and
 - (iv) if requested by the Bank, the Bank is provided with a copy of any other report prepared by the cover pool monitor in accordance with section 420(b).
- (2) However, if any amounts become due and payable by the covered bond SPV under the covered bond programme,—
- (a) the issuer is not required to comply with subsection (1); and
 - (b) the covered bond SPV must provide the Bank with any information it requests in relation to the covered bond programme.

Compare: 1989 No 157 s 139H(1),(2)

417 Bank may require corrective action

If an issuer fails to comply with any of the requirements of section 416(1), the Bank may, by notice to the issuer, require the issuer to take the corrective action that the Bank may specify in the notice.

Compare: 1989 No 157 s 139H(3)

418 Offence to fail to take corrective action

- (1) An issuer commits an offence if the issuer, without reasonable excuse, fails to comply with a notice issued under section 417.
- (2) An issuer that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$100,000;
 - (b) in any other case, to a fine not exceeding \$2,500,000.

*Cover pool monitor***419 Cover pool monitor**

- (1) A **cover pool monitor** must—
 - (a) be independent of the issuer; and
 - (b) be 1 or more of the following:
 - (i) a licensed auditor under the Auditor Regulation Act 2011;
 - (ii) a registered audit firm under the Auditor Regulation Act 2011, if the issuer ensures that appropriate arrangements are in place to ensure that the functions of the cover pool monitor are performed by, or under the supervision of, a licensed auditor;
 - (iii) a member of any other class of persons or firms that has been approved by the Bank; and
 - (c) be required, under its contract of appointment, to do the things specified in section 420.
- (2) For the purposes of this section, **independent** means independent of both the issuer and any associated person of the issuer.
- (3) However, a person's appointment as auditor does not affect their independence.

Compare: 1989 No 157 s 139I(1), (3), (4)

420 Cover pool monitor must perform certain services under contract

A cover pool monitor must be required to do the following under the contract of appointment:

- (a) assess, at a given point in time, and in accordance with any agreed procedures specified in the covered bond programme,—
 - (i) the arithmetical accuracy of the tests carried out in accordance with section 416(1)(a); and

- (ii) the issuer's compliance with the requirements of section 416(1)(b); and
- (b) provide the issuer with reports on the matters required under paragraph (a) at intervals of not more than 12 months; and
- (c) provide reports at intervals of not more than 3 months if the cover pool monitor is not satisfied—
 - (i) as to the arithmetical accuracy of the tests carried out in accordance with section 416(1)(a); or
 - (ii) that the issuer has complied with the requirements of section 416(1)(b); and
- (d) if paragraph (c) applies, continue to provide 3-monthly reports until the cover pool monitor is satisfied that the issuer has remedied those matters; and
- (e) report on all other matters required by the regulations (if any).

Compare: 1989 No 157 s 139I(1)(c)

Resolution or statutory management, etc, of issuer

421 Limitation on application of resolution, statutory management, etc, provisions to covered bond SPV

- (1) Subsections (2) and (3) apply in relation to the following provisions:
 - (a) sections 284(1), 287, 303, 330(1), and 345(1) of this Act;
 - (b) section 248 of the Companies Act 1993;
 - (c) sections 42(1), 43(1), 44(1), and 45(2) of the Corporations (Investigation and Management) Act 1989.
- (2) Nothing in a provision referred to in subsection (1)—
 - (a) prevents the transfer of the legal title to property in a cover pool from an issuer to a covered bond SPV;
 - (b) prevents the transfer, under a contract, of any documentation or data relating to property in a cover pool from the issuer to a covered bond SPV or a person acting on behalf of that SPV;
 - (c) prevents a covered bond SPV, or a person acting on behalf of that SPV, from exercising a power of attorney granted by the issuer in relation to property in a cover pool;
 - (d) affects the issuer's obligation to pay money collected on behalf of, and held on trust for, a covered bond SPV, to that SPV;
 - (e) prevents the enforcement of any of the above rights by, or on behalf of, a covered bond SPV.
- (3) However, subsection (2) applies only if—
 - (a) the covered bond SPV is the owner of the property in the cover pool; and

- (b) the covered bond programme is registered under section 412.
- (4) A covered bond SPV is not—
 - (a) an associated person for the purposes of section 38(1)(a) of the Corporations (Investigation and Management) Act 1989 or section 170(1)(b) of the Insurance (Prudential Supervision) Act 2010; or
 - (b) an associate of a person for the purposes of section 95(1)(b) of the Overseas Investment Act 2005; or
 - (c) a subsidiary for the purposes of section 38(2) of the Corporations (Investigation and Management) Act 1989, section 95(2) of the Overseas Investment Act 2005, or section 170(2) of the Insurance (Prudential Supervision) Act 2010; or
 - (d) a related company for the purposes of section 271 of the Companies Act 1993.

Compare: 1989 No 157 s 139J

Subpart 11—Bank may apply to put deposit takers and associated persons into liquidation

422 Liquidation of licensed deposit takers and associated persons

- (1) This section applies to a person (A) if—
 - (a) A is a licensed deposit taker (whether or not it is in resolution); or
 - (b) A—
 - (i) is an associated person of a licensed deposit taker; and
 - (ii) is in resolution; and
 - (iii) is not itself a licensed deposit taker.
- (2) The Bank or a resolution manager may apply to the court under the Companies Act 1993 to put A into liquidation under that Act.
- (3) Subsection (2) applies whether A is a company, an association, or an overseas company.
- (4) A resolution manager may apply only with the prior approval of the Bank.
- (5) An application under this section must be treated as if it were an application under section 241(2)(c) of the Companies Act 1993 (and, in the case of an overseas company, also an application under section 342 of that Act).
- (6) This section does not limit or affect any other legislation that provides for the winding up, liquidation, or dissolution of a body corporate or a class of body corporate.

Compare: 1989 No 157 s 136

423 When court may appoint liquidator

- (1) The court may, on an application under section 422, appoint a liquidator for A if it is satisfied that—
 - (a) A is unable to pay its debts (and, for that purpose, section 287 of the Companies Act 1993 applies with all necessary modifications whether or not A is a company); or
 - (b) A has persistently or seriously contravened any prudential obligation; or
 - (c) it is just and equitable that the deposit taker be put into liquidation.
- (2) In the case of an application under section 422, subsection (1) applies instead of section 241(4) of the Companies Act 1993.

Subpart 12—Miscellaneous

424 Licensed deposit taker not entitled to be informed about exercise of powers under this Part

None of the following have a right to be consulted or informed about the exercise, or possible exercise, of any powers conferred by this Part or to make representations to any person about the exercise, or possible exercise, of those powers:

- (a) a licensed deposit taker, an associated person, or a subsidiary;
- (b) a director or an employee of a person referred to in paragraph (a).

Compare: 1989 No 157 s 147

Part 8
Miscellaneous

Subpart 1—Use of words bank, banker, and banking

Limit on use of restricted words in name or title

425 Limit on use of restricted words in name or title

- (1) This section applies to a person that—
 - (a) is a financial service provider; or
 - (b) directly or indirectly holds out that they are entitled, qualified, able, or willing to be in the business of providing a financial service to persons in New Zealand.
- (2) The person must not—
 - (a) be formed, incorporated, or registered using a name or title that includes a restricted word; or
 - (b) change its name or title to a name or title that includes a restricted word; or

- (c) use a name or title that includes a restricted word when carrying on any activity directly or indirectly in New Zealand (whether through an agent or otherwise).
- (3) In sections 427, 428, 429, and 431, **use**, in relation to a restricted word, means to act in a manner prohibited by this section.

Compare: 1989 No 157 s 64(1), (7)

426 Offence to contravene limit on use of restricted words

A financial service provider that contravenes section 425 commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$100,000;
- (b) in any other case, to a fine not exceeding \$2,500,000.

Compare: 1989 No 157 s 64(5), (6)

427 When restriction does not apply

Section 425 does not apply to—

- (a) the Bank; or
- (b) a person who is authorised by the Bank under section 428 or 429 to use a name or title that includes a restricted word (but only to the extent that the person is acting within the scope of the authorisation).

Compare: 1989 No 157 s 64(2)

428 Bank may authorise particular persons to use restricted words in name or title

The Bank may, by written notice given to any of the following persons, authorise that person to use a name or title that includes a restricted word:

- (a) a licensed deposit taker;
- (b) a person licensed or registered as a bank in a country other than New Zealand;
- (c) an associated person of a licensed deposit taker;
- (d) a person that is, or intends to become, a financial service provider.

Compare: 1989 No 157 s 65(1), (2)(a), (4)(a)

429 Bank may authorise class of persons to use restricted words in name or title

- (1) The Bank may issue a notice that authorises a class of licensed deposit takers or overseas banks to use a name or title that includes a restricted word.
- (2) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

- (3) In this section, **overseas bank** means a person licensed or registered as a bank in a country other than New Zealand.

Compare: 1989 No 157 s 65(1), (3)(a)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication The maker must publish it in accordance with the Legislation (Publication) Regulations 2021 LA19 s 74(1)(aa)

Presentation The Minister must present it to the House of Representatives LA19 s 114

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

430 Authorisation extends to Registrar of Companies, etc

An authorisation under section 428 or 429 applies to any other person (for example, the Registrar of Companies), but only to the extent that the acts of that person are necessary to allow the person to whom the authorisation is given to have the benefit of the authorisation.

Compare: 1989 No 157 s 65(7)

431 Bank's policies for giving authorisation

- (1) The Bank's statement of prudential policy under section 254 of the Reserve Bank of New Zealand Act 2021 must outline in general terms the Bank's policies about how the Bank acts, or proposes to act, when exercising a power under section 428 or 429.
- (2) The statement must set out the Bank's policies in relation to minimum requirements for a deposit taker to be authorised to use a name or title that includes a restricted word.

Example

A deposit taker that is authorised to use "bank" may be required to comply with higher financial strength requirements than those that would otherwise apply.

432 Conditions

The Bank may give an authorisation under section 428 or 429 subject to any conditions that the Bank thinks fit.

Examples

Example 1

The Bank gives an authorisation to company A on the condition that A use a particular name or title approved by the Bank.

Example 2

The Bank gives an authorisation to overseas bank B on the condition that B carries on in New Zealand only those activities specified by the Bank.

Compare: 1989 No 157 s 65(2)(b), (3)(b), (4)(b), (5)

433 Application of Companies Act 1993

Sections 427 to 432 do not affect or limit the following sections of the Companies Act 1993:

- (a) sections 20 to 24 (which relate to company names);
- (b) section 333 (which relates to the reservation of the name of an overseas company).

Compare: 1989 No 157 s 66A

*Limit on use of restricted words in advertisement***434 Limit on use of restricted words in advertisement**

- (1) A specified person must not use a restricted word in an advertisement unless the advertisement contains a statement that complies with subsections (2) and (3).
- (2) The statement must—
 - (a) state that the specified person is not a licensed deposit taker; and
 - (b) be communicated in a manner that ensures, as far as is reasonably practicable, that the statement attracts the attention of the persons to whom the advertisement is directed.
- (3) The statement must also—
 - (a) state that the specified person is not regulated or supervised by the Bank; or
 - (b) if the specified person is regulated or supervised by the Bank, state the capacity in which it is regulated or supervised by the Bank.
- (4) In this subpart,—

advertisement—

 - (a) means anything used to promote—
 - (i) the interests of a specified person; or
 - (ii) the services or products of that person; and
 - (b) includes a trade mark of a specified person; but
 - (c) does not include the name or title of a specified person

specified person—

 - (a) means a person that—
 - (i) is a financial service provider; or
 - (ii) directly or indirectly holds out that they are entitled, qualified, able, or willing to be in the business of providing a financial service to persons in New Zealand; but

(b) does not include a licensed deposit taker.

Compare: 1989 No 157 s 66B(1), (2), (5)

435 Offence to contravene advertising limit

A specified person that contravenes section 434 commits an offence and is liable on conviction to,—

(a) in the case of an individual, a fine not exceeding \$50,000:

(b) in any other case, a fine not exceeding \$500,000.

Compare: 1989 No 157 s 66B(3), (4)

Bank may require change of name, etc

436 Power to require change of name, etc

(1) If the Bank is satisfied on reasonable grounds that a person has contravened, or is contravening, section 425 or 434, the Bank may, by notice, require the person to do any of the following:

(a) change the person's name or title to a name or title that does not include a restricted word:

(b) cease using a restricted word in an advertisement:

(c) cease carrying on any activity using a name or title that includes a restricted word.

(2) A person must comply with the requirement within the period of time and in the manner specified in the notice.

Compare: 1989 No 157 s 66D(1)–(3)

437 Offence to contravene requirement to change name, etc

A person that contravenes a requirement under section 436 commits an offence and is liable on conviction to,—

(a) in the case of an individual, a fine not exceeding \$50,000:

(b) in any other case, a fine not exceeding \$500,000.

Compare: 1989 No 157 s 66D(4), (5)

Subpart 2—Trans-Tasman co-operation

438 Interpretation in this subpart

In this subpart,—

action that is likely to have a detrimental effect on financial system stability in Australia includes an action that prevents or interferes with any outsourcing arrangement

authorised deposit-taking institution has the same meaning as in section 5(1) of the Banking Act 1959 (Aust)

outsourcing arrangement means an arrangement for business, or functions relating to any business, of an authorised deposit-taking institution to be carried on by a person other than that authorised deposit-taking institution.

Compare: 1989 No 157 s 67A

439 Trans-Tasman co-operation

When performing or exercising functions, powers, or duties under this Act or other prudential legislation, the Bank must—

- (a) support Australian financial authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in Australia; and
- (b) to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in Australia.

Compare: 1989 No 157 s 68A(1)

440 Bank's duty to consult

- (1) This section applies if the Bank has reasonable cause to believe that an action it proposes to take under this Act or any other prudential legislation is an action that is likely to have a detrimental effect on financial system stability in Australia.
- (2) Before taking the proposed action, the Bank must, to the extent it considers reasonably practicable in the circumstances having regard to urgency or any other similar constraint, consult and consider the advice of every Australian financial authority it considers to be relevant in the circumstances.

Compare: 1989 No 157 s 68A(2), (3)

441 Failure to comply with subpart does not affect validity of Bank's actions

The performance or exercise of a function, power, or duty is not invalid by reason only of a failure to comply with this subpart.

Compare: 1989 No 157 s 68A(4)

Subpart 3—Confidentiality

442 Disclosure of information by Bank

- (1) This section applies to the following:
 - (a) information given to the Bank under this Act;
 - (b) information derived from or based on information referred to in paragraph (a);
 - (c) information relating to the exercise, or possible exercise, of the powers conferred by this Act.
- (2) The Bank may publish or disclose any information to which this section applies only if—

- (a) the information is available to the public under an Act (other than the Official Information Act 1982) or is otherwise publicly available information; or
 - (b) the information is in a statistical or summary form; or
 - (c) the disclosure is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Bank by this Act or any other legislation; or
 - (d) the disclosure is made under subpart 3 of Part 6 of the Reserve Bank of New Zealand Act 2021 (which relates to information sharing); or
 - (e) the publication or disclosure is to a person who the Bank is satisfied has a proper interest in receiving the information; or
 - (f) the publication or disclosure is with the consent of the person to whom the information relates or of the person to whom the information is confidential.
- (3) The Bank must not publish or disclose information under subsection (2)(e) unless satisfied that satisfactory provision exists to protect the confidentiality of the information.
- (4) Nothing in this section limits the Privacy Act 2020 (*see*, in particular, the limits on the disclosure of personal information in information privacy principles 11 and 12 set out in section 22 of that Act).
- (5) A member of the board of the Bank, the Governor, any other office holder of the Bank, or any employee of the Bank must not publish or disclose any information to which this section applies except for the purposes of, or in connection with, the performance or exercise of any function, power, or duty under this Act or any other legislation.

443 Relationship with other Acts

- (1) Nothing in any Act, other than this Act, the Official Information Act 1982, or the Privacy Act 2020, requires the Bank or any person to whom information has been published or disclosed under section 442 to make that information available to any other person.
- (2) The Bank may make information to which this section applies available under the Official Information Act 1982 only if 1 or more grounds under section 442(2) apply.

444 Offence to make unauthorised disclosure

A member of the board of the Bank, the Governor, any other office holder of the Bank, or any employee of the Bank who intentionally or recklessly discloses information in contravention of section 442 commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

445 Conditions relating to disclosure of information

- (1) The Bank may, by notice to a person to whom any information is published or disclosed under section 442(2)(c), (e), or (f), impose any conditions in relation to the publication, disclosure, or use of the information by the person.
- (2) The Bank must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed may include, without limitation, conditions relating to—
 - (a) maintaining the confidentiality of anything provided:
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided.

446 Restrictions on further disclosure of information

- (1) If information is published or disclosed to a person under section 442(2)(c), the person may publish, disclose, or use the information only—
 - (a) for the purposes of, or in connection with, functions, powers, or duties referred to in section 442(2)(c); and
 - (b) in accordance with any conditions imposed by the Bank.
- (2) If information is published or disclosed to a person under section 442(2)(e), the person may publish, disclose, or use the information only if the publication, disclosure, or use—
 - (a) is authorised by the Bank and is in accordance with any conditions imposed by the Bank; or
 - (b) is for the purposes of, or in connection with, the functions, powers, or duties of a person under any legislation.
- (3) If information is published or disclosed to a person under section 442(2)(f), the person may publish, disclose, or use the information only in accordance with the conditions of the consent (if any).

447 Offence for unauthorised disclosure or use

- (1) A person who intentionally or recklessly publishes, discloses, or uses information in contravention of section 446 commits an offence.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in any other case, to a fine not exceeding \$2,500,000.

Subpart 4—Bank’s power to specify how things are done

448 When subpart applies

- (1) This subpart applies if this Act provides for any thing to be done in the manner specified by the Bank (including where the manner is specified in a notice given by the Bank).

Examples

An application for a licence must be made in the manner specified by the Bank.

The Bank may require information to be given under section 99 in a manner specified in a notice given or issued by the Bank.

- (2) In this subpart, a **relevant person** is a person who must or may do the thing.

Guidance note

See *also* section 292 of the Reserve Bank of New Zealand Act 2021, which allows regulations to be made that may require a person to pay fees or charges in connection with the Bank’s performance or exercise of any of its functions, powers, or duties.

449 Bank may require particular persons to comply with specified requirements

- (1) The Bank may give a notice to 1 or more named relevant persons.
- (2) The notice may specify 1 or more of matters referred to in section 451.

450 Bank may require class of persons to comply with requirements

- (1) The Bank may issue under this section a notice that applies to a class of relevant persons.
- (2) The notice may specify 1 or more of matters referred to in section 451.
- (3) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
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Presentation	The Minister must present it to the House of Representatives	LA19 s 114
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Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116
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This note is not part of the Act.

451 Requirements that may be specified

A notice under section 449 or 450 may specify 1 or more of the following:

- (a) by whom, when, where, and how the thing must be done:
- (b) the form that must be used in connection with doing the thing:

- (c) what information or other evidence or documents must be provided in connection with the thing:
- (d) requirements with which information, evidence, or documents that are provided in connection with the thing must comply.

452 Bank may also require further information

A relevant person must also provide to the Bank the information that is required by the Bank to assist the Bank in performing or exercising its functions, powers, or duties in relation to the thing (for example, to supply further information in support of an application or request).

453 Bank may refuse to act if requirements not complied with

- (1) The Bank may refuse to perform or exercise a function, power, or duty if—
 - (a) a thing is not done in the manner specified by the Bank in a notice given or issued under this subpart; or
 - (b) a person fails to comply with section 452.

Example

An applicant for a licence does not apply in the manner specified by the Bank in a notice issued under section 450.

The Bank may refuse to consider the application.

- (2) This section does not limit any other provision of this Act that provides for an offence, a penalty, or any other consequence for a failure to do a thing in the manner specified by the Bank.

Subpart 5—Regulations

454 General regulations

- (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:
 - (a) providing for anything this Act says may or must be provided for by regulations:
 - (b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing—
 - (i) by whom, when, where, and how the thing must be done:
 - (ii) the form that must be used in connection with doing the thing:
 - (iii) what information or other evidence or documents must be provided in connection with the thing:
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:

- (c) authorising the Bank to determine or prescribe, by notice, any of the matters under paragraph (b):
 - (d) prescribing criteria for the purposes of the definition of specified overseas entity in clause 1(1) of Schedule 2:
 - (e) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Before recommending regulations under this section for the purposes of Part 6, the Minister must have regard to the advice given by the Bank under subsection (4).
- (3) The Minister may recommend regulations under this section in any other case only on the recommendation of the Bank.
- (4) The Bank must, before regulations are made under this section for the purposes of Part 6, give the Minister advice about the proposed regulations.
- (5) The Minister must, before recommending regulations under subsection (1)(d), be satisfied that the regulations are necessary or desirable to—
- (a) promote public confidence in the financial system; or
 - (b) avoid or mitigate the adverse effects of the following risks:
 - (i) risks to the stability of the financial system:
 - (ii) risks from the financial system that may damage the broader economy.
- (6) *See* section 292 of the Reserve Bank of New Zealand Act 2021, which allows regulations to be made that impose fees, charges, and costs in connection with this Act.
- (7) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (8) If regulations made under subsection (1)(c) authorise the Bank to determine or prescribe matters by notice,—
- (a) a notice made under the regulations is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (7)

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (8)(a)		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021, unless it is published by PCO	LA19 ss 69, 73, 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

455 Regulations relating to depositor compensation scheme

- (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:
- (a) prescribing classes of persons that are not eligible depositors under Part 6:
 - (b) prescribing kinds of trusts, schemes, or other arrangements for the purposes of section 191(2)(b) and declaring matters under section 191(3)(b):
 - (c) prescribing kinds of currencies for the purposes of section 192(1)(a)(ii):
 - (d) prescribing requirements and kinds of debt securities for the purposes of section 192(1)(c):
 - (e) specifying kinds of licensed deposit takers for the purposes of section 192(2)(c):
 - (f) declaring classes of debt securities not to be protected deposits under Part 6:
 - (g) providing for matters relating to temporary high balance limits, including 1 or more of the following:
 - (i) prescribing limits or how limits must be determined:
 - (ii) providing for the circumstances or other matters relating to when a limit applies (for example, providing for how long an amount may be held in a protected deposit before the limit ceases to apply):
 - (iii) providing for a limit to apply in relation to an eligible depositor only if the eligible depositor or another person does 1 or more things in the manner prescribed by the regulations or in the manner specified by the Bank (for example, supplies information to the Bank):

Example

A couple sells their family home and deposit the proceeds of the sale into a bank account. Ordinarily, the limit for compensation under Part 6 is \$100,000. However, as a result of the deposit, the amount of the protected deposit exceeds this limit.

The regulations may provide for the \$100,000 limit to be increased in these circumstances. However, the extra protection will cease to apply if the proceeds are held in the bank account for longer than a specified period.

- (h) prescribing kinds of persons for the purposes of section 205(5)(b):
 - (i) prescribing kinds of trusts for the purposes of section 209(1)(b)(ii):
 - (j) providing for matters referred to in sections 212 and 215:
 - (k) providing for matters referred to in section 213:
 - (l) providing for matters referred to in section 214.
- (2) The Minister must, before making a recommendation under subsection (1), have regard to the advice given by the Bank under subsection (3).
 - (3) The Bank must, before regulations are made under this section, give the Minister advice about the proposed regulations.
 - (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

456 Regulations prescribing classes of persons that are not eligible depositors

The Minister must, before recommending regulations under section 455(1)(a),—

- (a) have regard to the purpose of Part 6 set out in section 190; and
- (b) be satisfied that the regulations are necessary or desirable in order to prevent entitlements to compensation under Part 6 from being available to a class of persons where—
 - (i) those persons have entered into arrangements with a purpose or an effect of circumventing, evading, or defeating the principle that the compensation should be limited to \$100,000 per eligible depositor per deposit taker; or
 - (ii) making the compensation available to those persons may reduce incentives for them to prudently assess risk when making investment decisions; or
 - (iii) making the compensation available would otherwise present a risk to the stability of New Zealand’s financial system.

457 Regulations prescribing matters relating to protected deposits

- (1) The Minister must, before recommending regulations under section 455(1)(c), have regard to—
 - (a) the purpose of Part 6 set out in section 190; and
 - (b) the principle that the regulations should be consistent with the Bank efficiently and effectively performing its functions under Part 6.
- (2) The Minister must, before recommending regulations under section 455(1)(d) and (f),—
 - (a) have regard to the purpose of Part 6 set out in section 190; and
 - (b) have regard to the economic substance of the securities to which the regulations relate; and
 - (c) be satisfied that the regulations are necessary or desirable in order to ensure that compensation under that Part is available only in relation to debt securities of the kinds mentioned in subsection (3).
- (3) For the purposes of subsection (2)(c), the debt securities are either of the following:
 - (a) debt securities that—
 - (i) are commonly referred to in the financial markets as current account, savings account, or term deposit products; and
 - (ii) are not readily tradable:

Examples*Tradable on market*

A deposit taker intends to issue a debt security that is quoted on a licensed market or listed on some other established market. Investors will be able to readily buy and sell the debt security.

Regulations may be made to prevent compensation from being available under the depositor compensation scheme in relation to that debt security.

Tradable under terms and conditions

A deposit taker issues a debenture. The terms and conditions of that debenture provide the means to allow an investor to readily sell the debenture.

Regulations may be made to prevent compensation from being available under the depositor compensation scheme in relation to the debenture.

-
- (b) debt securities whose economic substance is substantially similar to any of the debt securities referred to in paragraph (a).

458 Bank's advice about regulations relating to overseas currencies

The Bank's advice under section 455(3) in relation to regulations under section 455(1)(c) must include—

- (a) the Bank's estimate of the extent to which New Zealanders are investing in debt securities that are not protected deposits solely because they are denominated in a currency other than New Zealand currency; and
- (b) advice on whether those investments may have a material effect on the stability of the financial system.

459 Regulations providing for licensed deposit takers that do not issue protected deposits

- (1) The Minister must, before recommending regulations under section 455(1)(e),—
 - (a) be satisfied that the regulations—
 - (i) are not inconsistent with the purposes set out in section 3; and
 - (ii) are not likely to cause significant detriment to public confidence in the depositor compensation scheme; and
 - (b) be satisfied of either or both of the following:
 - (i) that, having regard to the matters set out in subsection (2), applying Part 6 in relation to the deposit takers to which the regulations relate is unnecessary or unreasonable in the circumstances:
 - (ii) that there are arrangements (other than under Part 6) for protecting relevant investors that are satisfactory in the circumstances.
- (2) For the purposes of subsection (1)(b)(i), the Minister must have regard to—
 - (a) the nature of the businesses carried out by the deposit takers to which the regulations relate (and, in particular, whether those deposit takers do not generally issue debt securities that would otherwise be protected deposits and whether the issue of any debt securities that would otherwise be protected deposits is only an incidental part of the businesses of those deposit takers); and
 - (b) the kinds of clients of the deposit takers to which the regulations relate (and, in particular, whether the deposit takers mainly provide services to wholesale clients that are unlikely to need the benefit of compensation under Part 6).
- (3) In this section,—
 - relevant investor** means a person who—
 - (a) is a holder of a debt security issued by a deposit taker to which the regulations relate or a person on whose behalf such a debt security is held; and
 - (b) would be an eligible depositor under Part 6 in respect of that debt security if the regulations were not in force

wholesale client has the same meaning as in section 49(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

460 Bank's advice about regulations providing for licensed deposit takers that do not issue protected deposits

The Bank must, before giving advice under section 455(3) in relation to regulations under section 455(1)(e), consult the persons or representatives of the persons that the Bank considers will be substantially affected by the regulations.

461 Regulations providing for temporary high balance limits

The Minister must, before recommending regulations under section 455(1)(g),—

- (a) be satisfied that the regulations are necessary or desirable to protect eligible depositors in circumstances where the amount of a protected deposit is temporarily higher as a result of special events or circumstances of a personal, domestic, or household character (for example, the sale of a family home); and
- (b) have regard to—
 - (i) the purpose of Part 6 set out in section 190; and
 - (ii) the size and composition of the protected deposits to which the regulations will relate; and
 - (iii) the likely effect that the regulations will have on the costs referred to in section 238(2); and
 - (iv) the principle that the regulations should be consistent with the Bank efficiently and effectively performing its functions under Part 6 (in particular, providing compensation as soon as practicable after the Bank has issued a specified event notice and ensuring that determining entitlements does not involve undue cost or delay).

462 Bank's advice about regulations for temporary high balance limits

The Bank must, before giving advice under section 455(3) in relation to regulations under section 455(1)(g), consult licensed deposit takers or the persons or organisations that the Bank considers are able to represent the views of licensed deposit takers.

463 Regulations providing for calculation of amount of person's protected deposits or share of protected deposits

The Minister must, before recommending regulations under section 455(1)(j),—

- (a) have regard to the purpose of Part 6 set out in section 190; and
- (b) have regard to the economic substance of the arrangements referred to in section 212(1), under which persons are entitled, or may receive, benefits in connection with protected deposits; and
- (c) have regard to the principles that—

- (i) compensation under Part 6 should be limited to \$100,000 per eligible depositor per deposit taker; and
- (ii) the regulations should be consistent with the Bank efficiently and effectively performing its functions under Part 6 (in particular, providing compensation as soon as practicable after the Bank issues a specified event notice and ensuring that determining entitlements does not involve undue cost or delay).

464 Regulations providing for transactions that have not been processed

The Minister must, before recommending regulations under section 455(1)(k),—

- (a) be satisfied that the regulations are necessary or desirable to provide certainty about the treatment of payments made under transactions to which section 213 applies; and
- (b) have regard to the purpose of Part 6 set out in section 190.

465 Regulations providing for taking into account funds that are withdrawn or available to eligible depositors during resolution

The Minister must, before recommending regulations under section 455(1)(l),—

- (a) be satisfied that the regulations are necessary or desirable to fairly take into account the matter referred to in section 214(1)(b); and
- (b) be satisfied that eligible depositors are likely to receive in connection with the regulations no less favourable treatment than would have been the case had a liquidation of the entity under New Zealand law commenced immediately before the entity entered into resolution; and
- (c) have regard to the purpose of Part 6 set out in section 190.

466 Transitional and savings provisions for orderly implementation of Act

- (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:
 - (a) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of this Act (in addition to, or in substitution for, any other transitional, savings, or related provisions in Schedule 1) apply during the whole or any part of the period ending on the relevant date:
 - (b) providing that, subject to any conditions stated in the regulations, specified provisions of this Act (including definitions and any transitional, savings, or related provisions in Schedule 1), or provisions of other legislation amended, revoked, or repealed by this Act, do not apply, or continue to apply or apply with modifications or additions, or both, during the whole or any part of the period ending on the relevant date.

- (2) The Minister must, before recommending regulations under this section, be satisfied that the regulations—
 - (a) are necessary or desirable for the orderly implementation of this Act; and
 - (b) are consistent with the purposes of this Act.
- (3) In addition, the Minister may recommend regulations under this section only on the recommendation of the Bank.
- (4) This section is repealed on the close of the relevant date.
- (5) Any regulations made under this section that are in force on the relevant date are revoked on the close of that day.
- (6) Nothing in Schedule 1 limits this section.
- (7) In this section, **relevant date** means the third anniversary of the date on which section 10 comes into force.
- (8) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Subpart 6—Levy for Crown to recover cost of public support of deposit taker in financial distress or other difficulties

467 Licensed deposit takers must pay levy to allow Crown to recover cost of public support

- (1) Every person that is included in a prescribed class of licensed deposit takers must pay to the Bank, or a prescribed person on behalf of the Bank (the **prescribed person**), a levy prescribed by the regulations made under this subpart.
- (2) A licensed deposit taker must pay the levy by the date specified for payment, whether in an invoice or other appropriate document given to the deposit taker by the Bank or the prescribed person.
- (3) The specified date for payment must be not less than 30 days after the date of the invoice or other appropriate document.
- (4) The amount of any unpaid levy and any interest under section 469 is recoverable in a court of competent jurisdiction as a debt due to the Bank or the prescribed person.

468 Bank or prescribed person collects levy on behalf of Crown

- (1) The Bank or the prescribed person collects the levy under this subpart on behalf of the Crown.
- (2) The Bank or the prescribed person must ensure that each levy payment is paid into a Crown Bank Account within 30 days after the payment is received.

469 Interest on unpaid levy

- (1) A person who owes a levy under this subpart is liable to pay to the Bank or the prescribed person interest assessed at the rate and applied by the method (if any) prescribed by the regulations made under this subpart.
- (2) The interest is payable on—
 - (a) any unpaid levy; and
 - (b) any unpaid instalment payment in respect of any levy; and
 - (c) any unpaid interest that has been charged already.

470 Levy regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations providing for the levies.
- (2) Before making a recommendation under this section, the Minister must—
 - (a) consult the Bank; and
 - (b) comply with sections 471 and 472.
- (3) Levies must be prescribed on the basis that the following costs should be met fully out of the levies:
 - (a) a portion of the costs to the Crown of expenses or capital expenditure that has been incurred or a capital injection that has been made as referred to in section 471(1)(a), where the size of the portion to be met by levies under this subpart is determined by the Minister under subsection (4); and
 - (b) the costs of collecting the levy money.
- (4) In determining the portion, the Minister must take into account the following:
 - (a) any recovery of the costs to the Crown that has occurred or is likely to occur (other than under this subpart);
 - (b) the extent to which incurring the expenses or capital expenditure or making the capital injection was necessary or desirable for either or both of the purposes referred to in section 471(1)(b)(i) and (ii).
- (5) The regulations may—
 - (a) specify the class or classes of licensed deposit taker that are required to pay a levy;
 - (b) provide for different levies for different classes of licensed deposit taker:

- (c) specify the amount of levies, or the method of calculating or ascertaining the amount of levies for each class:
 - (d) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the costs referred to in subsection (3):
 - (e) provide for the payment and collection of levies (which may include providing for instalment payments):
 - (f) provide for interest under section 469:
 - (g) provide for waivers, discounts, or refunds of the whole or any part of a levy for any case or class of cases.
- (6) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

471 Process matters for recommendation

- (1) The Minister must, before making a recommendation,—
- (a) be satisfied that the Crown has incurred expenses or capital expenditure or made a capital injection—
 - (i) in connection with dealing with the financial distress or other difficulties of a licensed deposit taker or an associated person that is or was in resolution; or
 - (ii) under sections 25B and 25C of the Public Finance Act 1989 in connection with a licensed deposit taker or an associated person; and
 - (b) be satisfied that incurring the expenses or capital expenditure or making the capital injection were necessary or desirable for either or both of the following purposes (whether or not there were other purposes):
 - (i) to maintain the stability of the financial system:
 - (ii) to maintain the continuity of systemically important activities undertaken by 1 or more licensed deposit takers or associated persons; and
 - (c) be satisfied that the expenses or capital expenditure was incurred or the capital injection was made within the 5-year period before the regulations will be made; and
 - (d) have regard to the following:

- (i) the extent to which deposit takers of each class that will be required to pay a levy under this subpart directly or indirectly benefited, or are likely to benefit, from the expenses or capital expenditure that was incurred or the capital injection that was made:
 - (ii) the effect that the obligation to pay a levy under this subpart is likely to have on the soundness of a deposit taker of each of those classes:
 - (iii) the net cost to the Crown of incurring the expenses or capital expenditure or making a capital injection (taking into account any recovery of those costs that has occurred or is likely to occur).
- (2) The reference to expenses, capital expenditure, or a capital injection in subsection (1)(a) does not include—
- (a) any grants or advances made under subpart 8 of Part 6 (deficiency in fund); or
 - (b) any compensation paid under subpart 9 of Part 7 (compensation for pre-resolution creditors or shareholders that are worse off).

472 Consultation about proposed levy regulations

- (1) The Minister must, before making a recommendation, ensure that licensed deposit takers or the persons or organisations that the Bank considers are able to represent the views of licensed deposit takers are consulted.
- (2) The consultation must include consultation relating to the amount of levies or method of calculating or ascertaining the amount of levies.
- (3) The Bank may carry out the consultation on the Minister's behalf if the Minister and the Bank agree to the Bank acting under this subsection.

473 Effect of failure to comply

A failure to comply with section 472 does not affect the validity of any regulations made under this subpart.

Subpart 7—Other miscellaneous provisions

474 How notices, directions, and other documents must be given

- (1) This section and section 475 apply (unless this Act provides otherwise) if a provision of this Act requires or authorises any notice, direction, or other document, or any notification, to be given or provided to a person.
- (2) The notice, direction, document, or notification must be in writing and must, in the case of a notice, direction, document, or notification being given or provided to—
 - (a) an individual, be given—

- (i) by delivering it personally or by an agent (such as a courier) to the person; or
 - (ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
 - (iii) by sending it by email to the person's email address provided by the person for the purpose; or
 - (iv) in any other manner a District Court Judge directs:
- (b) a company within the meaning of the Companies Act 1993, be served in a manner provided for in section 387(1) or 388 of that Act:
 - (c) an overseas company, be served in a manner provided for in section 389(1) or 390 of the Companies Act 1993:
 - (d) any other body corporate, be served in a manner in which it could be given or served if the body corporate were a company within the meaning of the Companies Act 1993.
- (3) If a person is absent from New Zealand, a notice, direction, document, or notification given to the person's agent in New Zealand in accordance with subsection (2) must be treated as having been given or provided to the person.
- (4) If a person has died, the notice, direction, document, or notification may be given, in accordance with subsection (2), to their personal representative.

475 When certain notices, directions, or documents treated as given

- (1) In the absence of proof to the contrary, a notice, direction, document, or notification sent to a person in accordance with section 474(2)(a)(iii) must be treated as having been given or provided to the person on the second working day after the day on which it is sent.
- (2) Section 392 of the Companies Act 1993 applies for the purposes of section 474(2)(b) to (d).

476 Meaning of deposit taker

The provisions set out in Schedule 2 have effect according to their terms.

Part 9

Repeals and amendments to other Acts

Repeals

477 Repeals

The following are repealed:

- (a) the Banking (Prudential Supervision) Act 1989 (1989 No 157):
- (b) the Non-bank Deposit Takers Act 2013 (2013 No 104).

Amendments to Reserve Bank of New Zealand Act 2021

478 Principal Act

- (1) Sections 479 to 484 amend the Reserve Bank of New Zealand Act 2021.
- (2) *See also* Schedule 3 for further amendments to that Act.

479 Section 10 amended (Bank's functions)

- (1) After section 10(1)(b)(iii), insert:
 - (iiia) issuing warnings, reports, or guidelines, or making comments in connection with compliance with that legislation; and
- (2) In section 10(1)(b)(iv), after “difficulties”, insert “(for example, acting as the resolution authority in relation to a licensed deposit taker that is in resolution)”.
- (3) After section 10(1)(b), insert:
 - (ba) to manage and administer the depositor compensation scheme under the Deposit Takers Act 2023, including doing the things set out in section 195 of that Act:

480 Section 74 amended (Ability to delegate)

- (1) After section 74(1)(f), insert:
 - (fa) a person appointed as a resolution manager under Part 7 of the Deposit Takers Act 2023 (subject to subsection (2A)):
- (2) After section 74(2), insert:
 - (2A) The board may delegate to a resolution manager only any of the functions or powers under sections 285, 286, 289, 295 to 297, 313 to 332, and 340 to 342 of the Deposit Takers Act 2023.

481 Section 182 amended (Protection for certain persons)

In section 182(1)(g), after “statutory manager”, insert “or resolution manager”.

482 Section 189 amended (Crown indemnities in relation to statutory management)

- (1) In the heading to section 189, after “statutory management”, insert “or resolution”.
- (2) In section 189(a), after “statutory manager”, insert “, and each resolution manager”.
- (3) In section 189(a), replace “the statutory manager’s” with “their”.
- (4) In section 189(b), after “statutory management”, insert “or resolution”.

483 New section 190A and cross-heading inserted

After section 190, insert:

*Qualified privilege protection***190A Bank’s warnings, reports, guidelines, or comments protected by qualified privilege**

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any warning, report, guideline, or comment issued or made by the Bank in the course of the performance or intended performance of its functions must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 2011 No 5 s 23

484 Section 240 amended (Form and content of annual report)

After section 240(1)(n), insert:

- (na) the financial statements of the depositor compensation fund, and the statement of responsibility and audit report for those statements, required under subpart 9 of Part 6 of the Deposit Takers Act 2023; and

*Amendments to Financial Markets Conduct Act 2013***485 Principal Act**

- (1) Sections 486 to 488 amend the Financial Markets Conduct Act 2013.
- (2) *See also* Schedule 3 for further amendments to that Act.

486 Section 6 amended (Interpretation)

In section 6(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

487 Section 22 amended (False or misleading representations)

In section 22(h), after “the Consumer Guarantees Act 1993”, insert “or Part 6 of the Deposit Takers Act 2023”.

488 Schedule 1 amended

In Schedule 1, replace clause 21 and the cross-heading above clause 21 with:

*Exclusion for licensed deposit takers***21 Offers of prescribed financial products or debt securities by licensed deposit takers**

An offer of financial products does not require disclosure under Part 3 of this Act if the financial products are—

- (a) financial products of a kind prescribed for the purposes of this paragraph that are issued by a licensed deposit taker; or

- (b) debt securities issued by a licensed deposit taker; or
- (c) financial products of a kind prescribed for the purposes of this paragraph that are issued by a subsidiary of a licensed deposit taker; or
- (d) prescribed currency forwards that are issued by a licensed deposit taker or a subsidiary of a licensed deposit taker.

Amendments to Public Finance Act 1989

489 Principal Act

Sections 490 to 492 amend the Public Finance Act 1989.

490 Section 8 amended (Appropriation limited by amount)

In section 8(b), after “section 25 or” insert “section 25C or”.

491 New sections 25B and 25C inserted

After section 25A, insert:

25B When Minister may exercise certain powers in connection with financial institution in serious financial difficulties

- (1) The Minister may exercise a power under section 25C only if—
 - (a) the Reserve Bank of New Zealand has advised the Minister that 1 or more regulated entities are, or are likely to be, insolvent or otherwise in serious financial difficulties (the **situation**); and
 - (b) the Minister is satisfied of the matters set out in subsection (2) on reasonable grounds.
- (2) The matters that the Minister must be satisfied of are as follows:
 - (a) that incurring expenses or capital expenditure under section 25C in relation to the situation is necessary or desirable to do either or both of the following:
 - (i) maintain the stability of the financial system:
 - (ii) maintain the continuity of systemically important activities undertaken by 1 or more regulated entities; and
 - (b) that there is no reasonable prospect of the situation being adequately dealt with to the Minister’s satisfaction in a timely and orderly way other than through exercising the power under section 25C.
- (3) In this section, **regulated entity** has the same meaning as in section 5(1) of the Reserve Bank of New Zealand Act 2021.

25C Expenses or capital expenditure in connection with financial institution in serious financial difficulties

- (1) The Minister may approve the incurring of expenses or capital expenditure in relation to the situation referred to in section 25B(1)(a) and, whether or not

there is an appropriation by Parliament available for the purpose and despite sections 4, 8, and 9, the expenses or capital expenditure may be incurred accordingly.

- (2) Public money may be spent, without further authority than this section, for the purpose of meeting expenses or capital expenditure incurred in accordance with subsection (1) that have not been appropriated.
- (3) A statement about any expenses and capital expenditure incurred under this section in any financial year that have not been appropriated must be included in—
 - (a) the annual financial statements of the Government; and
 - (b) an Appropriation Bill for confirmation by Parliament.
- (4) Subsection (3) does not limit the validity of any expenses or capital expenditure incurred under this section.

492 Section 27 amended (Annual financial statements of Government)

After section 27(2)(c)(iii), insert:

(iiia) a statement of expenses and capital expenditure incurred under section 25C:

Amendments to Insurance (Prudential Supervision) Act 2010

493 Principal Act

Section 494 amends the Insurance (Prudential Supervision) Act 2010.

494 Section 8 amended (Meaning of carrying on insurance business in New Zealand)

- (1) After section 8(2)(a), insert:
 - (aa) the Bank or a subsidiary of the Bank; or
- (2) In section 8(2)(b), before “an entity”, insert “the Crown, or”.

Consequential amendments

495 Consequential amendments

- (1) Amend the Acts specified in Part 1 of Schedule 3 as set out in that Part.
- (2) Amend the secondary legislation specified in Part 2 of Schedule 3 as set out in that Part.

Schedule 1 Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

1 Overview

- (1) Subpart 1 allows the depositor compensation scheme (and other provisions of Part 6 of this Act) to come into force before deposit takers are required to hold a licence under this Act.
- (2) Subpart 2 provides for the licensing of registered banks and licensed NBDTs under this Act.
- (3) Subpart 3—
 - (a) prevents applications for registration under the Banking (Prudential Supervision) Act 1989 or a licence under the Non-bank Deposit Takers Act 2013 from being made after section 16 comes into force; and
 - (b) provides for pending applications to be treated as withdrawn on the main commencement date.
- (4) Subpart 4 provides for miscellaneous matters.
- (5) This clause is only a guide to the general scheme and effect of this Part.

2 Interpretation

In this Part,—

core standards means the standards referred to in—

- (a) section 79(a) (which relates to capital); and
- (b) section 79(b) (which relates to liquidity); and
- (c) section 86 (which relates to depositor compensation); and
- (d) section 88 (which relates to the disclosure of information); and
- (e) regulations made for the purposes of this definition

existing deposit taker means a person that is a registered bank or a licensed NBDT

licensed NBDT means a licensed NBDT under the Non-bank Deposit Takers Act 2013

main commencement date means the date on which section 10 comes into force

registered bank means a registered bank under the Banking (Prudential Supervision) Act 1989

statutory management means statutory management under the Banking (Prudential Supervision) Act 1989 or the Corporations (Investigation and Management) Act 1989

transitional period means the period that—

- (a) starts on the commencement of clause 3; and
- (b) ends when section 10 comes into force.

Subpart 1—Depositor compensation scheme

3 Existing registered banks and licensed NBDTs treated as licensed deposit takers for purposes of depositor compensation scheme

- (1) During the transitional period, an existing deposit taker must be treated as being a licensed deposit taker for the purposes of—
 - (a) Part 6 of this Act (which relates to the depositor compensation scheme); and
 - (b) any other provision of this Act relating to the enforcement, application, or effect of Part 6 of this Act.
- (2) The provisions referred to in subclause (1)(b) do not include sections 93 and 94 (directors' and New Zealand chief executive officers' due diligence duty).

4 Debt securities issued before issuer becomes licensed deposit taker are protected

- (1) This clause applies to a debt security if—
 - (a) the issuer (**A**) is a licensed deposit taker (or an existing deposit taker); and
 - (b) the debt security meets the requirements of section 192(1) (and is not a security of the kind referred to in section 192(2)).
- (2) However, this clause does not apply if the debt security has been cancelled, redeemed, or forfeited, or all of the obligations owing under the security have been discharged.
- (3) The debt security is a protected deposit even if it was issued before **A** became a licensed deposit taker (or an existing deposit taker).

5 When Bank may issue specified event notice

- (1) During the transitional period, the Bank may issue a specified event notice for the purposes of Part 6 in relation to an existing deposit taker (**A**) if—
 - (a) 1 or more of the following apply:
 - (i) **A** is put into liquidation under New Zealand law;
 - (ii) a receiver is appointed in relation to the whole, or substantially the whole, of the assets and undertaking of **A** and the Receiverships Act 1993 applies to the receivership;
 - (iii) **A** has become subject to statutory management; and
 - (b) the Bank is satisfied that—

- (i) A's financial or other difficulties are likely to cause serious and prolonged disruption to the ability of eligible depositors to deal with their protected deposits in accordance with their applicable terms and conditions; and
 - (ii) issuing the notice is the most appropriate means to deal with that disruption.
- (2) Section 194(2) to (4) and the rest of Part 6 of this Act apply with all necessary modifications in relation to the notice as if it were issued under section 194(1) (and, in the case of subclause (1)(a)(iii), as if the statutory management were a resolution).

6 Use of fund to support statutory management

- (1) The Bank may authorise an amount to be paid out of the fund (as defined in section 191) for the purposes of supporting a statutory management measure undertaken or to be undertaken for an existing deposit taker (A) and meeting all other costs of the Bank in performing or exercising its functions, powers, or duties in connection with the measure if—
 - (a) the Bank is satisfied that eligible depositors are likely to receive, as a result of the statutory management measure, no less favourable treatment than would have been the case had the eligible depositors been paid compensation under subpart 3 of Part 6; and
 - (b) the total amount paid out of the fund under this clause in connection with the statutory management of A does not exceed the maximum amount calculated under section 231.
- (2) In this clause, **statutory management measure** means any action taken by—
 - (a) the statutory manager or managers; or
 - (b) the Bank to further 1 or more of the purposes set out in section 259 in connection with A being subject to statutory management, whether the Bank performs or exercises its functions, powers, or duties under this Act or any other legislation (and that section applies with all necessary modifications as if references to resolution were references to statutory management).
- (3) For the purposes of this clause, Part 6 of this Act applies with all necessary modifications as if—
 - (a) a statutory management measure were a resolution measure; and
 - (b) the statutory management were a resolution.
- (4) However, section 233(2)(a) does not apply for the purposes of this clause.

7 Depositor compensation and information disclosure standards may apply during transitional period

- (1) The Bank may make standards referred to in sections 86 and 88 that apply during all or any part of the transitional period.
- (2) The standards may apply to all existing deposit takers, a particular existing deposit taker, or a class of existing deposit takers.
- (3) For that purpose, subpart 2 of Part 3 and subpart 2 of Part 5 of this Act apply with all necessary modifications as if existing deposit takers were licensed deposit takers.

Subpart 2—Licences for registered banks and licensed NBDTs

8 When Bank must issue licence to existing deposit taker

- (1) The Bank must issue a licence under this subpart to an existing deposit taker (A) if the Bank is satisfied that A—
 - (a) has applied for the licence in accordance with clause 9; and
 - (b) has the ability to comply with the core standards that will apply to A; and
 - (c) the eligibility criteria (if any) that are prescribed by the regulations are satisfied.
- (2) The licence must be treated as being a licence issued under subpart 2 of Part 2 of this Act.

9 Application for licence made by existing deposit taker

- (1) An existing deposit taker may apply for a licence in the manner that is specified by the Bank.
- (2) *See* subpart 4 of Part 8 of this Act (which provides for the Bank’s power to specify the manner in which an application is made).

Example

In order to facilitate the orderly and efficient processing of applications from existing deposit takers, the Bank may specify that if a particular existing deposit taker or an existing deposit taker of a particular class wants a licence by a particular date, the existing deposit taker must apply by some other date. A different date may apply to different classes of existing deposit takers.

Subpart 3—Provisions relating to new deposit takers

10 Persons may not apply to be registered as banks or licensed as NBDTs after section 16 comes into force

On and after the date on which section 16 comes into force, a person—

- (a) may not apply to be registered as a registered bank under section 70 of the Banking (Prudential Supervision) Act 1989; and

- (b) may not apply to be licensed as an NBDT under section 13 of the Non-bank Deposit Takers Act 2013.

Example

Company A wants to enter the market as a non-bank deposit taker. However, section 16 (which allows an application for a licence to be made) has come into force. A can no longer apply under the Non-bank Deposit Takers Act 2013. Instead, A must apply for a licence under this Act.

11 Licence holder may be treated as registered bank or licensed NBDT during transitional period

- (1) This clause applies if a person (A) is issued a licence before the main commencement date.
- (2) The Bank may issue the licence subject to a condition that A must be treated as being—
- (a) a registered bank for the purposes of any provision or provisions of the Banking (Prudential Supervision) Act 1989 or any other specified legislation; or
- (b) a licensed NBDT for the purposes of any provision or provisions of the Non-bank Deposit Takers Act 2013 or any other specified legislation.
- (3) Until the main commencement date, A must be treated as being a registered bank or a licensed NBDT in accordance with the condition.
- (4) This clause does not limit any prudential obligation that A has as a licensed deposit taker.
- (5) If any prudential obligation conflicts with any obligation that A has by virtue of A being treated as being a registered bank or a licensed NBDT, the prudential obligation prevails.
-

Example continued from clause 10

A applies for and is issued with a licence under subpart 2 of Part 2 of this Act.

However, before the main commencement date, the Non-bank Deposit Takers Act 2013 remains in force. This includes licensing and holding out requirements for non-bank deposit takers in sections 11 and 12 of that Act.

Under the conditions of A's licence, A must be treated as being a licensed NBDT for the purposes of those sections (and for the purposes of certain other legislation that refers to licensed NBDTs). Accordingly, A does not breach those sections.

12 Pending applications on main commencement date

- (1) This clause applies if,—
- (a) before the main commencement date, a person has—
- (i) applied to be registered as a registered bank under section 70 of the Banking (Prudential Supervision) Act 1989; or

- (ii) applied to be licensed as an NBDT under section 13 of the Non-bank Deposit Takers Act 2013; but
 - (b) on that date, the application has not yet been determined.
- (2) The application must be treated as withdrawn (and, accordingly, the Bank is not required to consider the application further).

13 Subpart prevails over former Acts

This subpart applies despite anything to the contrary in the Banking (Prudential Supervision) Act 1989 or the Non-bank Deposit Takers Act 2013.

Subpart 4—Miscellaneous

14 Existing statutory management continues

- (1) This clause applies if, immediately before the main commencement date, a registered bank, a licensed NBDT, or an associated person of a registered bank or a licensed NBDT is subject to statutory management.
- (2) The person continues to be subject to statutory management (and the Banking (Prudential Supervision) Act 1989 or the Corporations (Investigation and Management) Act 1989 (as the case may be) continues to apply) as if this Act had not been enacted.

15 First proportionality framework

- (1) The Bank may perform any duty under section 77 before the commencement of that section.
- (2) Any consultation undertaken before the commencement of section 77 that is of the kind referred to in section 77(4) must be treated as consultation required for the purposes of that section.
- (3) The Bank must take all reasonable steps to ensure that the first proportionality framework under section 77 is published within 9 months after the commencement of that section.

16 Guidance on due diligence duty

The Bank must take all reasonable steps to ensure that the guidance under section 97 is published within 6 months after the commencement of that section.

17 First statement of funding approach

- (1) The Minister may perform any duty under section 246 before the commencement of that section.
- (2) Any consultation undertaken before the commencement of section 246 that is of the kind referred to in that section must be treated as consultation required for the purposes of that section.

- (3) The Minister must take all reasonable steps to ensure that the first statement of funding approach is issued before the first anniversary of the commencement of subpart 7 of Part 6.

18 First statement of approach to resolution

The Bank must take all reasonable steps to ensure that the first statement of approach to resolution is issued before the first anniversary of the commencement of subpart 2 of Part 7.

19 Existing registered banks authorised to use restricted words in name or title

- (1) If a person (A), immediately before the commencement of this clause, is a registered bank, the person must be treated as being authorised to use a name or title that includes a restricted word under section 428(a).
- (2) Despite subclause (1), A must not use, without an authorisation from the Bank under section 428 or 429, a name or title that includes a restricted word in respect of a managed investment scheme of which A is a supervisor or a manager within the meaning of section 6(1) of the FMCA.
- (3) This clause does not extend to a person carrying on any activity by means of, or through the agency of, a registered bank.

20 Existing registration of covered bond programme continues

A covered bond programme that, immediately before the commencement of this clause, is registered under section 139G of the Banking (Prudential Supervision) Act 1989 must be treated as being registered under section 412 of this Act.

21 Pending applications for registration of covered bond programme

- (1) This clause applies if,—
- (a) before the commencement of this clause, a person has applied to register a covered bond programme under section 139E of the Banking (Prudential Supervision) Act 1989; but
- (b) on the commencement of this clause, the application has not yet been determined.
- (2) The application must be treated as an application made under section 410 of this Act and the Bank must consider the application in accordance with sections 411 to 415.

22 Information obtained under former law

- (1) This clause applies to—
- (a) information supplied or disclosed to, or obtained by, the Bank (or an appointed person) under, or for the purposes of, or in connection with,

- the exercise of powers conferred by, the Banking (Prudential Supervision) Act 1989 or the Non-bank Deposit Takers Act 2013; and
- (b) information derived from or based upon information referred to in paragraph (a):
 - (c) information relating to the exercise, or possible exercise, of the powers conferred by the Banking (Prudential Supervision) Act 1989 or the Non-bank Deposit Takers Act 2013.
- (2) The Bank and any employee of the Bank may use the information for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Bank by this Act or any other legislation (whether or not that purpose is connected with the purpose for which the information was supplied, disclosed, or obtained).
- (3) In this clause, an **appointed person** is a person appointed under the Banking (Prudential Supervision) Act 1989 or the Non-bank Deposit Takers Act 2013 to perform or exercise a function, power, or duty under that Act.

Schedule 2

Deposit takers

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1 Interpretation

(1) In this schedule,—

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

credit has the same meaning as in section 6 of the Credit Contracts and Consumer Finance Act 2003

credit contract—

(a) has the same meaning as in section 7 of the Credit Contracts and Consumer Finance Act 2003; but

(b) does not include—

(i) a contract under which no interest charges, and no credit fees, as defined in section 5 of that Act, are payable; or

(ii) a contract of a class that is declared by Order in Council not to be a credit contract for the purposes of this schedule (*see* clause 6)

DT regulated offer—

(a) means a regulated offer within the meaning of section 41 of the FMCA; and

(b) includes an offer of debt securities that would be a regulated offer within the meaning of that section if clause 21 of Schedule 1 of the FMCA were not in force

issuer has the same meaning as in section 6(1) of the FMCA

offer has the same meaning as in section 6(1) of the FMCA

- specified overseas entity** means a bank or any other entity that—
- (a) is licensed, registered, or otherwise authorised to accept deposits under the law of an overseas jurisdiction; and
 - (b) meets the criteria prescribed by the regulations for the purposes of this definition (if any).
- (2) In this schedule, a person is **carrying on business in New Zealand** if the person is any of the following:
- (a) a body corporate or an association of persons incorporated or formed in New Zealand;
 - (b) a person who carries on business while being ordinarily resident in New Zealand;
 - (c) an overseas company that is, or is required to be, registered under the Companies Act 1993;
 - (d) an association of persons formed outside New Zealand that is carrying on business in New Zealand within the meaning of section 332 of the Companies Act 1993 (applied with all necessary modifications).
- (3) In this schedule, a person is **ordinarily resident in New Zealand** if that person—
- (a) is domiciled in New Zealand; or
 - (b) is living in New Zealand and the place where that person usually lives is, and has been for the immediately preceding 12 months, in New Zealand, whether or not that person has on occasions been away from New Zealand during that period.

2 Meaning of deposit taker

- (1) In this Act, **deposit taker**—
- (a) means a person carrying on business in New Zealand that is any of the following:
 - (i) a person that carries on the business of borrowing and lending money;
 - (ii) a specified overseas entity;
 - (iii) a person, or a member of a class of persons, that is declared by Order in Council to be a deposit taker for the purposes of this Act (*see* clause 6); but
 - (b) does not include any of the following:
 - (i) a local authority;
 - (ii) the New Zealand Local Government Funding Agency Limited (*see* section 7 of the Local Government Borrowing Act 2011);
 - (iii) the Crown (as defined in the Public Finance Act 1989):

- (iv) a Crown entity under section 7(1)(a) of the Crown Entities Act 2004;
 - (v) the Bank or any subsidiary of the Bank;
 - (vi) a person, or a member of a class of persons, that is declared by Order in Council not to be a deposit taker for the purposes of this Act (*see* clause 6).
- (2) A person carries on the business of borrowing and lending money if the person—
- Borrowing*
- (a) carries on a business that includes doing 1 or more of the following:
 - (i) making DT regulated offers of debt securities;
 - (ii) making, in New Zealand, offers of any debt securities of a class that is declared by Order in Council to be debt securities for the purposes of this subparagraph;
 - (iii) receiving money from a conduit issuer of debt securities; and
- Lending*
- (b) carries on a business of providing credit under credit contracts.
- (3) Subclauses (1)(a)(i) and (2) apply whether or not the business of borrowing and lending money is the person's only business or the person's principal business.

3 Receiving money from conduit issuer of debt securities

In this schedule, a person (A) **receives money from a conduit issuer of debt securities** if—

- (a) A is an associated person of another person (the **conduit issuer**); and
- (b) the conduit issuer raises an amount of money under an offer of a kind referred to in clause 2(2)(a)(i) or (ii); and
- (c) that money is raised as part of an agreement under which 50% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—
 - (i) A; or
 - (ii) A and 1 or more third persons that are associated persons of A; and
- (d) the money that is provided to A under paragraph (c) is 10% or more of the money that is raised under paragraph (b); and
- (e) all or part of the money that is provided under paragraph (c) has not yet been repaid or returned to the conduit issuer; and
- (f) all other requirements prescribed in the regulations for the purposes of this clause (if any) are satisfied.

4 Miscellaneous matters relating to territorial scope

- (1) For the purposes of clause 2(2)(a)(ii), debt securities are offered in New Zealand if an offer of the debt securities is received by a person in New Zealand, unless the offeror demonstrates that it has taken all reasonable steps to ensure that persons in New Zealand may not accept the offer.
- (2) The following must be disregarded when considering whether debt securities are offered in New Zealand:
 - (a) where any resulting issue or transfer occurs:
 - (b) where the issuer or offeror is resident, incorporated, or carries on business.
- (3) Clause 2(2)(b) applies regardless of whether the business of providing credit under credit contracts is wholly or partly in a country outside New Zealand.

Example

An overseas company in the business of borrowing and lending makes DT regulated offers of debt securities to investors in New Zealand. The extent of its business in New Zealand is above the threshold (if any) prescribed by the regulations (see clause 5).

The overseas company lends money only to overseas borrowers.

Despite lending only to overseas borrowers, the company is still a deposit taker under this Act (unless clause 2(1)(b) applies).

5 Person may not carry on business of borrowing and lending money if extent of business in New Zealand is below threshold prescribed in regulations

- (1) For the purposes of this schedule, a person does not carry on the business of borrowing and lending money if—
 - (a) either or both of the following apply:
 - (i) the extent to which the person offers debt securities to persons in New Zealand is less than a threshold prescribed in the regulations:
 - (ii) the extent to which the person otherwise provides banking and related financial services to persons in New Zealand is less than a threshold prescribed in the regulations; and
 - (b) all other requirements prescribed in the regulations for the purposes of this clause (if any) are satisfied.
- (2) Clause 2(2) is subject to this clause.

6 Declarations for purposes of this schedule

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—
 - (a) declare that a person or a person of a particular class—

- (i) is a deposit taker for the purposes of this Act; or
 - (ii) is not a deposit taker for the purposes of this Act:
 - (b) declare that a contract of a particular class is not a credit contract for the purposes of this schedule:
 - (c) declare that debt securities of a particular class are debt securities for the purposes of clause 2(2)(a)(ii).
- (2) An Order in Council made under this clause is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

7 Procedural requirements for recommendation

- (1) The Bank may give a recommendation under clause 6 only if the Bank—
- (a) is satisfied that the declaration is necessary or desirable in order to promote the main purpose of this Act, or any of the additional purposes, specified in section 3; and
 - (b) in the case of clause 6(1)(a), has had regard to the nature of the business activities carried on by the person or class of persons that are the subject of the declaration; and
 - (c) in the case of clause 6(1)(b), has had regard to the economic substance of the contracts that are the subject of the declaration; and
 - (d) in the case of clause 6(1)(c), has had regard to the economic substance of the debt securities that are the subject of the declaration; and
 - (e) has consulted the persons or representatives of the persons that the Bank considers will be substantially affected by the declaration.
- (2) A failure to comply with subclause (1)(e) does not affect the validity of the Order in Council.

8 Bank's reasons

The Bank's reasons for making a recommendation under clause 6 (including why the declaration is appropriate) must be published together with the Order in Council.

Schedule 3 Consequential amendments

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Part 1 Amendments to Acts

Accident Compensation Act 2001 (2001 No 49)

In Schedule 1, clause 49(5), delete “registered”.

In Schedule 1, after clause 49(5), insert:

(5A) In subclause (5), **banks** means licensed deposit takers (as defined in the Deposit Takers Act 2023) that are authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)

In section 5(1), repeal the definitions of **non-bank deposit taker** and **registered bank**.

In section 5(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

Replace section 18(2)(n) with:

(n) a licensed deposit taker:

Replace section 130(1)(a) and (b) with:

- (a) for licensed deposit takers and life insurers, the Reserve Bank of New Zealand (**Reserve Bank**) is the relevant AML/CFT supervisor:
- (b) for persons referred to in subsection (1A) (other than licensed deposit takers and life insurers), the Financial Markets Authority is the relevant AML/CFT supervisor:

Replace section 137(2) and (3) with:

- (2) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under any prudential legislation for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor.
- (3) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under any prudential legislation.

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)—*continued*

(3A) In subsections (2) and (3), **prudential legislation** has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021.

After section 140(2)(d), insert:

(e) the Deposit Takers Act 2023:

Repeal section 140(2)(p) and (t).

Banking (Prudential Supervision) Act 1989 (1989 No 157)

After section 70(2), insert:

(2A) However, an application may not be made on and after section 16 of the Deposit Takers Act 2023 comes into force (*see* subpart 3 of Part 1 of Schedule 1 of that Act).

Biosecurity Act 1993 (1993 No 95)

Replace section 100O(3)(a)(i) with:

(i) at a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023; and

Replace section 100ZE(3)(a)(i) with:

(i) at a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023; and

In section 140A(1), replace “a registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023”.

Burial and Cremation Act 1964 (1964 No 75)

In section 2(1), repeal the definition of **registered bank**.

In section 2(1), insert in its appropriate alphabetical order:

bank means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 28(3), replace “registered bank” with “bank”.

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17)

In Schedule 1, replace clause 41(1) with:

(1) The Council must establish, maintain, and operate 1 or more bank accounts at 1 or more licensed deposit takers (within the meaning of section 6 of the Deposit Takers Act 2023) that are authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

Child Support Act 1991 (1991 No 142)

Replace section 155(4)(a) with:

- (a) any licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”:

Community Trusts Act 1999 (1999 No 54)

Repeal section 20.

Companies Act 1993 (1993 No 105)

In section 2(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 236(2A), after “Reserve Bank of New Zealand under”, insert “subpart 5 of Part 2 of the Deposit Takers Act 2023 or”.

In section 239Z(3), delete “registered”.

After section 239Z(4), insert:

- (5) In this section, **bank** means a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”.

In section 239ABMA(1)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

Replace section 239ABMA(3) and (4) with:

- (3) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in subsection (1) have in that subsection the same meanings as in that section.
- (4) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (1)(b), and those modifications include—
 - (a) treating references to section 42(10)(b) of that Act as references to subsection (1)(b) of this section; and
 - (b) treating references to the enforcing counterparty as references to the secured creditor; and
 - (c) treating references to the grantor as references to the company that granted the security interest.

After section 241(2)(c)(vii), insert:

- (vii) if the company is a licensed deposit taker or an associated person of a licensed deposit taker under the Deposit Takers Act 2023, the Reserve Bank of New Zealand; or

Companies Act 1993 (1993 No 105)—continued

(viib) the Reserve Bank of New Zealand (if the application is made under section 151 of the Insurance (Prudential Supervision) Act 2010 or section 12 of the Deposit Takers Act 2023); or

Replace section 248(3) with:

(3) This section is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

In section 256A(1) and (2), delete “registered”.

After section 256A(1), insert:

(1A) In this section, **bank** means a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”.

Replace section 271(3) with:

(3) This section is subject to section 421(4) of the Deposit Takers Act 2023.

After section 286(1)(i), insert:

(j) the Reserve Bank of New Zealand if the failure to comply concerns section 257 of the Deposit Takers Act 2023.

In section 365(3), replace “registered bank (within the meaning of section 2 of the Banking (Prudential Supervision) Act 1989)” with “licensed deposit taker”.

In Schedule 7, after clause 1(1)(a), insert:

(aa) the costs, charges, and expenses referred to in section 347 of the Deposit Takers Act 2023; and

In Schedule 7, clause 2(3A)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

In Schedule 7, replace clause 2(3B) and (3C) with:

(3B) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in subclause (3A) have in that subclause the same meanings as in that section.

(3C) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subclause (3A)(b) (and those modifications include treating references to section 42(10)(b) of that Act as references to subclause (3A)(b) of this clause and treating references to the grantor as references to the company that granted the security interest).

Compensation for Live Organ Donors Act 2016 (2016 No 96)

In Schedule 2, clause 1(1) repeal the definition of **registered bank**.

In Schedule 2, clause 1(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In Schedule 2, clause 14(3), replace “registered bank” with “licensed deposit taker”.

Construction Contracts Act 2002 (2002 No 46)

In section 18A, repeal the definition of **registered bank**.

In section 18A, insert in their appropriate alphabetical order:

licensed bank means a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 18E(1)(a), replace “registered bank” with “licensed bank”.

Replace section 18FB(2)(b) with:

(b) a licensed bank:

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Replace section 8 with:

8 Consultation with Reserve Bank

- (1) The Registrar must consult the Reserve Bank of New Zealand before—
 - (a) giving a written notice requiring any licensed insurer, licensed deposit taker, or operator of a designated FMI to supply any information under section 9:
 - (b) appointing any person to carry out an investigation of the affairs of any licensed insurer, licensed deposit taker, or operator of a designated FMI under section 19:
 - (c) giving a written notice to any licensed insurer, licensed deposit taker, or operator of a designated FMI that it is considered to be a corporation at risk.
- (2) The FMA must consult the Reserve Bank of New Zealand before making a recommendation to the Minister under section 38 in respect of any licensed insurer, licensed deposit taker, or covered bond SPV.
- (3) In this section,—

covered bond SPV has the same meaning as in section 404 of the Deposit Takers Act 2023

designated FMI means a designated FMI within the meaning of the Financial Market Infrastructures Act 2021

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

licensed insurer means a licensed insurer within the meaning of the Insurance (Prudential Supervision) Act 2010

operator means an operator within the meaning of the Financial Market Infrastructures Act 2021.

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued

Replace section 38(5) with:

- (5) Subsections (1)(a) and (2) are subject to section 421(4) of the Deposit Takers Act 2023.

Replace section 42(8A) with:

- (8A) Subsection (1) is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

In section 42(10)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

Replace section 42(11) and (12) with:

- (11) See sections 62A and 62B for definitions and other matters relating to subsection (10).

Replace section 43(4) with:

- (4) Subsection (1) is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

Replace section 44(5) with:

- (5) Subsection (1) is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

Replace section 45(3) with:

- (3) Subsection (2) is subject to section 421(1) to (3) of the Deposit Takers Act 2023.

Replace section 51(9) and (10) with:

- (9) See sections 62A and 62B for definitions and other matters relating to subsection (8).

After section 62, insert:

62A Definitions of terms relating to qualifying derivatives

- (1) For the purposes of sections 42, 51, and 62B,—
- collateral** means any 1 or more of the following:
- (a) a financial product:
 - (b) gold, silver, or platinum:
 - (c) a document of title, a chattel paper, an investment security, money, a negotiable instrument, or an intangible (and terms and expressions used in this paragraph have the same meanings as in section 16(1) of the Personal Property Securities Act 1999):
 - (d) if a person (an **intermediary**) maintains an account to which interests in property, or rights to payment or delivery of property, of a kind specified in any of paragraphs (a) to (c) may be credited or debited, the rights of a

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

person in whose name the intermediary maintains the account, to the extent that those rights relate to the interests in that property or the rights to payment or delivery of that property:

- (e) the proceeds of property of a kind specified in any of paragraphs (a) to (d)

default time means the close of the day after the date on which the statutory management commences

derivative means a derivative within the meaning of section 8(4) of the Financial Markets Conduct Act 2013 (but disregarding any declaration referred to in section 8(5)(b) of that Act)

grantor means the corporation that granted the security interest

intermediated collateral means collateral of the kind referred to in paragraph (d) of the definition of collateral in this subsection

overseas person means—

- (a) an individual who is not ordinarily resident in New Zealand; or
- (b) an entity (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is incorporated or established outside New Zealand

possession includes possession within the meaning of section 18 of the Personal Property Securities Act 1999 (subject to section 62B and the regulations)

proceeds has the same meaning as in section 16(1) of the Personal Property Securities Act 1999 but applied with all necessary modifications, including treating references to collateral in the definition in that section as references to property of a kind specified in any of paragraphs (a) to (d) of the definition of collateral in this subsection

qualifying counterparty means—

- (a) a licensed deposit taker; or
- (b) the Accident Compensation Corporation (as continued by section 259 of the Accident Compensation Act 2001); or
- (c) the Guardians of New Zealand Superannuation established under section 48 of the New Zealand Superannuation and Retirement Income Act 2001; or
- (d) a specified operator within the meaning of section 5 of the Financial Market Infrastructures Act 2021; or
- (e) any prescribed entity; or
- (f) any other entity of a prescribed class

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued

qualifying derivative, in relation to enforcing a security interest over collateral, means a derivative to which both of the following apply:

- (a) the derivative is subject to—
 - (i) a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply; or
 - (ii) netting under the rules of a designated FMI to which subpart 5 of Part 3 of the Financial Market Infrastructures Act 2021 applies; and
- (b) the enforcing counterparty's interest in the collateral is evidenced in writing

security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999.

- (2) For the purposes of the definition of overseas person, an individual is **ordinarily resident in New Zealand** if that person—
 - (a) is domiciled in New Zealand; or
 - (b) is living in New Zealand and the place where that person usually lives, and has been living for the immediately preceding 12 months, is in New Zealand, whether or not that person has on occasions been away from New Zealand during that 12-month period.

Compare: 1989 No 157 s 122A

62B Matters relating to possession or control of collateral

- (1) For the purposes of section 42(10)(b) and 51(8)(b),—
 - (a) collateral must be taken not to be in the possession or under the control of the enforcing counterparty if,—
 - (i) under the security interest, the grantor is free to deal with the collateral in the ordinary course of business until the enforcing counterparty's interest in the collateral becomes fixed and enforceable; or
 - (ii) regulations made under section 62C so provide:
 - (b) intermediated collateral must be taken to be in the possession of the enforcing counterparty if that counterparty is the person in whose name the intermediary maintains the account:
 - (c) intermediated collateral must be taken to be under the control of the enforcing counterparty if subsection (3) applies:
 - (d) collateral must be taken to be in the possession or under the control of the enforcing counterparty if regulations made under section 62C so provide.

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

- (2) Subsection (1)(a)(i) applies even if the enforcing counterparty's interest in the collateral becomes fixed and enforceable before the enforcement of the security interest over that collateral.
- (3) For the purposes of subsection (1)(c), this subsection applies if—
- (a) the intermediary is not the grantor (but may be the enforcing counterparty or any other person); and
 - (b) there is an agreement in force between the intermediary and 1 or more other persons, 1 of which is the enforcing counterparty or the grantor; and
 - (c) the agreement has 1 or more of the following effects:
 - (i) the person in whose name the intermediary maintains the account is not able to transfer or otherwise deal with the collateral:
 - (ii) the intermediary must not comply with instructions given by the grantor in relation to the collateral without seeking the consent of the enforcing counterparty (or a person who has agreed to act on the instructions of the enforcing counterparty):
 - (iii) the intermediary must comply, or must comply in 1 or more specified circumstances, with instructions (including instructions to debit the account) given by the enforcing counterparty in relation to the collateral without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).
- (4) Subsections (1)(a)(i), (b), and (c), (2), and (3) and the definition of possession in section 62A are subject to regulations made under section 62C.
- (5) The fact that a grantor retains a right of 1 or more of the following kinds does not by itself prevent section 42(10)(b) or 51(8)(b) from being satisfied:
- (a) a right to receive and withdraw income in relation to the collateral:
 - (b) a right to receive notices in relation to the collateral:
 - (c) a right to vote in relation to the collateral:
 - (d) a right to substitute other collateral that the parties agree is of equivalent value for the collateral:
 - (e) a right to withdraw excess collateral:
 - (f) a right to determine the value of collateral.

Compare: 1989 No 157 s 122B

62C Regulations relating to qualifying derivatives

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued

- (a) prescribing entities and classes of entities for the purposes of the definition of qualifying counterparty in section 62A;
 - (b) providing for when collateral must or must not be taken to be in the possession or under the control of a person for the purposes of section 62B or any legislation that applies section 62B (and those matters may be specified with reference to different kinds of collateral or any other circumstances);
 - (c) providing that section 62B(1)(a)(i), (b), or (c) does not apply to specified kinds of collateral or in any other specified circumstances.
- (2) Regulations under this section must be made on the recommendation of—
- (a) the Minister of Finance; and
 - (b) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Companies Act 1993.
- (3) The Ministers may make a recommendation under subsection (2) only if the Ministers have—
- (a) had regard to the matters set out in subsection (4); and
 - (b) consulted the persons (or representatives of the persons) that the Ministers consider will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Ministers.
- (4) The Ministers must have regard to the following under subsection (3)(a):
- (a) the purposes of this Act and of the Companies Act 1993, the Personal Property Securities Act 1999, the Property Law Act 2007, and the Receiverships Act 1993;
 - (b) the effect of the regulations on—
 - (i) the maintenance of a sound and efficient financial system; and
 - (ii) the creditors of qualifying counterparties; and
 - (iii) the integrity of statutory management, deposit taker resolution, corporate insolvency, and personal property securities law.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 173(1)(fb) to (fd), (2)–(4)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Crown Entities Act 2004 (2004 No 115)

In section 136(1), insert in its appropriate alphabetical order:

licensed deposit taker means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 136(1), repeal the definition of **registered bank**.

In section 158(1)(a) and (b) and (6), replace “registered bank” with “licensed deposit taker”.

In section 161(1)(a), replace “registered bank” with “licensed deposit taker”.

Customs and Excise Act 2018 (2018 No 4)

Replace section 415(1)(a) with:

(a) keep a bank account at a licensed deposit taker; and

In section 415(7), insert in its appropriate alphabetical order:

licensed deposit taker means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 415(7), repeal the definition of **registered bank**.

Education and Training Act 2020 (2020 No 38)

In section 10(1), insert in its appropriate alphabetical order:

bank means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 154(2)(a)(i), replace “registered bank” with “bank”.

In section 297(1), replace “registered bank” with “bank”.

In Schedule 12, clause 8(1), replace “registered bank” with “bank”.

Electoral Act 1993 (1993 No 87)

In section 212, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 212, definition of **loan**, paragraph (b), replace “registered bank” with “licensed deposit taker”.

In section 212, repeal the definition of **registered bank**.

Evidence Act 2006 (2006 No 69)

Replace section 75(3)(a) with:

Evidence Act 2006 (2006 No 69)—continued

- (a) a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”:

Financial Market Infrastructures Act 2021 (2021 No 13)

In section 5, definition of **insolvency manager**, repeal paragraph (c)(ii).

In section 5, definition of **insolvency manager**, after paragraph (c), insert:

- (ca) the Bank, when it is performing or exercising functions under subparts 4 to 8 of Part 7 of the Deposit Takers Act 2023:

Replace section 59(1)(a) with:

- (a) sections 292(3) and 332 of the Deposit Takers Act 2023:

Financial Markets Conduct Act 2013 (2013 No 69)

In section 6(1), repeal the definitions of **licensed NBDT**, **NBDT**, and **registered bank**.

In section 6(1), definition of **issuer obligation**, replace paragraph (f) with:

- (f) the Deposit Takers Act 2023

In section 6(1), insert in its appropriate alphabetical order:

licensed bank means a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”

In section 60(3), replace the definition of **approved rating agency** with:

approved rating agency means a rating agency nominated or approved under section 61 of the Deposit Takers Act 2023 or section 62 of the Insurance (Prudential Supervision) Act 2010

In the heading above section 174(c), replace “*registered bank*” with “*licensed deposit taker*”.

Replace section 372(3)(e) with:

- (e) a licensed deposit taker:

In section 387(1A)(b), replace “registered banks, licensed insurers, and licensed NBDTs” with “licensed deposit takers and licensed insurers”.

In section 409A(2)(a), replace “registered bank or a licensed NBDT” with “licensed deposit taker”.

In section 426(1), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act 2023”.

In the heading above section 441(c), replace “*registered bank*” with “*licensed deposit taker*”.

Replace section 446E(a) with:

Financial Markets Conduct Act 2013 (2013 No 69)—*continued*

(a) is a licensed deposit taker or a licensed insurer; and

Replace section 451(1)(g) with:

(g) a licensed deposit taker:

Repeal section 451(1)(i) and (j).

Replace section 461K(1)(d) with:

(d) licensed deposit takers:

Repeal section 461K(1)(f) and (g).

In section 461O(1)(b), replace “registered bank” with “licensed bank”.

In section 461O(3), definition of **large**, replace “registered bank” with “licensed bank”.

In the heading to section 461Q, replace “**registered banks**” with “**licensed banks**”.

In section 461Q(1), replace “registered bank” with “licensed bank”.

In section 461Q(3), replace “registered bank” with “licensed bank”.

In section 461R(3)(b), replace “registered bank” with “licensed bank”.

In section 461Z, example, replace “registered bank” with “licensed bank”.

Replace section 561A(2) with:

(2) In deciding whether to grant, amend, or revoke an exemption under this subpart in relation to any provision of Part 7 or 7A, the FMA must consult the Reserve Bank if the exemption concerns—

(a) a licensed deposit taker; or

(b) a licensed insurer.

In Schedule 1, replace clause 37(1)(b) and (c) with:

(b) a licensed deposit taker; or

In Schedule 5, replace clause 16(2)(a) with:

(a) in the ordinary course of a business carried on by a rating agency approved under section 61 of the Deposit Takers Act 2023 or section 62 of the Insurance (Prudential Supervision) Act 2010; and

Financial Markets Supervisors Act 2011 (2011 No 10)

In section 4(1), repeal the definition of **deposit taker**.

In section 4(1), definition of **issuer obligation**, replace paragraph (g) with:

(g) the Deposit Takers Act 2023

In section 4(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 4(1), definition of **licensee obligation**, replace paragraph (g) with:

Financial Markets Supervisors Act 2011 (2011 No 10)—*continued*

(g) the Deposit Takers Act 2023:

In section 14(4)(b), replace “deposit taker” with “licensed deposit taker”.

In section 18(1)(a), replace “deposit taker” with “licensed deposit taker”.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

In section 4, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

Replace section 5(1)(b) and (c) with:

(b) being a licensed deposit taker:

Replace section 67(1)(c) with:

(c) if A has reasonable grounds to believe that a member that is a licensed deposit taker or a licensed insurer has contravened or is likely to contravene the Deposit Takers Act 2023 or the Insurance (Prudential Supervision) Act 2010 in a material respect, communicate that fact to the Reserve Bank; and

In Schedule 2, replace the item relating to registered banks with:

Reserve Bank of New Zealand	Licensed deposit takers	Deposit Takers Act 2023
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In Schedule 2, repeal the item relating to licensed NBDTs.

Fisheries Act 1996 (1996 No 88)

In section 2(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

Replace section 59(11)(c) with:

(c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by the person; and

Replace section 78(12)(c) with:

(c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

Replace section 79(6)(c) with:

Fisheries Act 1996 (1996 No 88)—continued

- (c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

Replace section 255(6) and (7) with:

- (6) No quota owned by any licensed deposit taker is to be regarded as associated quota merely because the deposit taker has in the ordinary course of its business as a financier become the owner of that quota.

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Replace section 107F(2)(c) with:

- (c) the Reserve Bank of New Zealand, but only if the credit union is a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023.

Gambling Act 2003 (2003 No 51)

In section 4(1), definition of **approved surety**, replace paragraph (b) with:

- (b) includes a licensed deposit taker

In section 4(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 4(1), repeal the definition of **registered bank**.

In section 104(1), replace “registered bank” with “licensed deposit taker”.

In section 105(1), replace “registered bank” with “licensed deposit taker”.

In section 211(2), replace “registered bank” with “licensed deposit taker”.

Income Tax Act 2007 (2007 No 97)

In section EB 24, in the list of defined terms, delete “registered bank,”.

In section EW 34(4)(a) and (b), replace “New Zealand registered bank” with “licensed bank”.

In section EW 34, in the list of defined terms, delete “registered bank,”.

In section EW 34, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

In section EZ 49(1)(a) and (b), replace “registered bank” with “licensed bank”.

In the heading above section FE 2(5), replace “*registered bank*” with “*licensed bank*”.

In section FE 2(5), replace “registered bank” with “licensed bank”.

In section FE 2, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

Income Tax Act 2007 (2007 No 97)—continued

Replace section FE 20(2) with:

- (2) In section FE 19, the **regulatory value** of an item for a New Zealand banking group at a time is the total risk-weighted value for the item for the purposes of standards issued under section 79(a) of the Deposit Takers Act 2023.

In section FE 20, in the list of defined terms, delete “registered bank.”

In section FE 20, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In section FE 28(1)(c) and (2)(b), replace “registered bank” with “licensed bank”.

In section FE 28, in the list of defined terms, delete “registered bank.”

In section FE 28, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In section FE 33(a), replace “registered bank” with “licensed bank”.

In section FE 33, in the list of defined terms, delete “registered bank.”

In section FE 33, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In the heading above section FE 34(2), replace “*Registered bank’s*” with “*Licensed bank’s*”.

In section FE 34(2) and (3), replace “registered bank” with “licensed bank” in each place.

In section FE 34(3), replace “registered bank’s” with “licensed bank’s”.

In section FE 34, in the list of defined terms, delete “registered bank.”

In section FE 34, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In section FE 36(1), (2), (3), and (5), replace “registered bank” with “licensed bank” in each place.

In the heading above section FE 36(2), replace “*Registered bank*” with “*Licensed bank*”.

In section FE 36(2)(b), replace “registered bank’s” with “licensed bank’s”.

In section FE 36(3) and (5), subsection headings, replace “*registered bank*” with “*licensed bank*”.

In section FE 36, in the list of defined terms, delete “registered bank.”

In section FE 36, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In section FE 36B(1), (2), and (3), replace “registered bank” with “licensed bank” in each place.

In the heading above section FE 36B(2), replace “*Registered bank*” with “*Licensed bank*”.

Income Tax Act 2007 (2007 No 97)—continued

In section FE 36B, in the list of defined terms, delete “registered bank,”.

In section FE 36B, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

In section FE 37, replace “registered bank” with “licensed bank” in each place.

In the heading above section FE 37(2), replace “*Registered bank*” with “*Licensed bank*”.

In section FE 37, in the list of defined terms, delete “registered bank,”.

In section FE 37, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

In section FG 1(2)(a), replace “registered bank” with “licensed bank”.

In section FG 1, in the list of defined terms, delete “registered bank”.

In section FG 1, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

In section GC 15(2)(a), replace “registered bank” with “licensed bank”.

Replace section GC 15(2)(c) with:

- (c) a licensed deposit taker that is not a licensed bank or an associated person under the Deposit Takers Act 2023 of a licensed deposit taker that is not a licensed bank:

In section GC 16(9)(a), replace “section 86 of the Non-bank Deposit Takers Act 2013” with “section 61 of the Deposit Takers Act 2023”.

In section GC 18(10)(a), replace “registered bank” with “licensed bank”.

Replace section GC 18(10)(e) with:

- (e) for a borrower referred to in section GC 15(2)(c), the feature reflects minimum capital ratio requirements that relate to features of loans and are imposed, when the financial arrangement is entered, on a deposit taker by standards issued under section 79(a) of the Deposit Takers Act 2023:

Replace section HD 15(2)(c) with:

- (c) at the time of the arrangement, the company was under statutory management under the Corporations (Investigation and Management) Act 1989, the Insurance (Prudential Supervision) Act 2010, or the Financial Market Infrastructures Act 2021, or in resolution under the Deposit Takers Act 2023.

Replace section HD 16(7) and the heading above section HD 16(7) with:

Income Tax Act 2007 (2007 No 97)—continued*Licensed bank or building society*

- (7) If a premium is paid by a licensed bank or a building society on behalf of a person to the insurer or to some other person not carrying on a business in New Zealand through a fixed establishment in New Zealand,—
- (a) the licensed bank or building society is not an agent of the insurer; and
 - (b) the person who provides the licensed bank or building society with the funds from which the premium is paid is an agent of the insurer.

In section HD 16, in the list of defined terms, delete “registered bank,”.

In section HD 16, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

Replace section HD 17B(4) and the heading above section HD 17B(4) with:

Licensed deposit takers

- (4) If a premium is paid by a licensed deposit taker on behalf of a person to Lloyd’s of London or to some other person, acting on behalf of Lloyd’s of London, not carrying on a business in New Zealand through a fixed establishment in New Zealand,—
- (a) the licensed deposit taker is not an agent of Lloyd’s of London; and
 - (b) the person who provides the licensed deposit taker with the funds from which the premium is paid is an agent of Lloyd’s of London.

In section HD 17B, in the list of defined terms, delete “licensed non-bank deposit taker,”.

In section HD 17B, in the list of defined terms, delete “registered bank,”.

In section HD 17B, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed deposit taker,”.

In section RE 10C(6)(b), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act 2023”.

In section RF 2(2B)(b)(i), replace “registered bank” with “licensed bank”.

In section RF 2, in the list of defined terms, delete “registered bank,”.

In section RF 2, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank,”.

Replace section RL 4(8) and the heading above section RL 4(8) with:

A definition

- (8) In this section, **licensed security holder** means a person who has a mortgage or other security over the relevant residential land, if that person is a licensed deposit taker.

In section RL 4, in the list of defined terms, delete “licensed non-bank deposit taker,”.

In section RL 4, in the list of defined terms, delete “registered bank,”.

Income Tax Act 2007 (2007 No 97)—continued

In section RL 4, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed deposit taker.”

In section RP 6(1), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “licensed bank”.

In section RP 6, in the list of defined terms, insert, in its appropriate alphabetical order, “licensed bank.”

In section YA 1, replace the definition of **financial institution**, with:

financial institution means a licensed deposit taker that must use IFRSs to prepare financial statements

In section YA 1, definition of **New Zealand banking group** replace “registered bank” with “licensed bank”.

In section YA 1, repeal the definitions of **licensed non-bank deposit taker** and **registered bank**.

In section YA 1, insert in their appropriate alphabetical order:

licensed bank means a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “Bank”

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

Infrastructure Funding and Financing Act 2020 (2020 No 47)

In section 106, repeal the definition of **registered bank**.

In section 106, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 107(a), replace “registered bank” with “licensed deposit taker”.

Insolvency Act 2006 (2006 No 55)

Replace section 202(3) with:

- (3) Nothing in this section applies to any payments received in good faith in the ordinary course of business and without negligence by any licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023.

Insolvency (Cross-border) Act 2006 (2006 No 57)

In Schedule 1, replace article 1(2) with:

- (2) This Schedule does not apply to a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 that is in resolution under that Act.

In Schedule 1, article 22(4), replace “statutory manager” with “resolution manager (within the meaning of the Deposit Takers Act 2023)”.

Insolvency (Cross-border) Act 2006 (2006 No 57)—continued

In Schedule 1, replace article 22(4)(a) with:

- (a) an application for recognition has been made in respect of a debtor that is a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023;

In Schedule 1, article 22(4)(c), replace “is placed in statutory management” with “enters resolution under that Act”.

Insurance Intermediaries Act 1994 (1994 No 41)

Replace section 17(1)(e) with:

- (e) that is a licensed deposit taker or an associated person of a licensed deposit taker that is in resolution under the Deposit Takers Act 2023.

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 6(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In section 6(1), replace the definitions of **voting right** and **voting security** with:

voting right has the same meaning as in section 6 of the Deposit Takers Act 2023

voting security means a security (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that confers a voting right.

Replace section 99(6)(a)(i) with:

- (i) a licensed deposit taker; or

Replace section 100(2)(b) with:

- (b) does not include an investment of assets of a statutory fund by way of deposit with a licensed deposit taker, even though the deposit taker is a related party of the life insurer concerned.

Replace section 170(4) with:

- (4) Subsections (1)(b) and (2) are subject to section 421(4) of the Deposit Takers Act 2023.

KiwiSaver Act 2006 (2006 No 40)

Replace section 221(4) with:

- (4) In this section, **bank account** means an account with a licensed deposit taker that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

In section 6, replace the definition of **bank** with:

Lawyers and Conveyancers Act 2006 (2006 No 1)—*continued*

bank means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 322(3)(b)(ii), replace “a financial institution within the meaning of the Banking (Prudential Supervision) Act 1989” with “a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023)”.

Legislation Act 2019 (2019 No 58)

In Schedule 4, repeal the item relating to the Banking (Prudential Supervision) Act 1989.

In Schedule 4, Part 1, insert in its appropriate alphabetical order:

Deposit Takers Act 2023

s 333

Limitation Act 2010 (2010 No 110)

Replace section 16(1)(j) with:

- (j) a claim under section 54 of the Corporations (Investigation and Management) Act 1989—the date on which the corporation was declared to be subject to statutory management:
- (k) a claim under section 310 of the Deposit Takers Act 2023—the date on which the licensed deposit taker entered resolution under that Act.

Replace section 16(2) with:

- (2) When section 301 of the Companies Act 1993 applies, in accordance with—
 - (a) section 55 of the Corporations (Investigation and Management) Act 1989, to a corporation subject to statutory management, the date in subsection (1)(i) must be read as the date on which the corporation was declared to be subject to statutory management:
 - (b) section 335 of the Deposit Takers Act 2023, to a licensed deposit taker in resolution, the date in subsection (1)(i) must be read as the date on which the deposit taker entered resolution.

Replace section 38(1)(e) with:

- (e) a claim under section 54 of the Corporations (Investigation and Management) Act 1989—the date on which the corporation was declared to be subject to statutory management:
- (f) a claim under section 310 of the Deposit Takers Act 2023—the date on which the licensed deposit taker entered resolution under that Act.

Replace section 38(2) with:

- (2) When section 301 of the Companies Act 1993 applies, in accordance with—
 - (a) section 55 of the Corporations (Investigation and Management) Act 1989, to a corporation subject to statutory management, the date in sub-

Limitation Act 2010 (2010 No 110)—continued

section (1)(d) must be read as the date on which the corporation was declared to be subject to statutory management:

- (b) section 335 of the Deposit Takers Act 2023, to a licensed deposit taker in resolution, the date in subsection (1)(d) must be read as the date on which the deposit taker entered resolution.

Local Government Borrowing Act 2011 (2011 No 77)

Replace section 7 and the cross-heading above section 7 with:

*Application of Deposit Takers Act 2023***7 Funding Agency not deposit taker**

The Funding Agency is not a deposit taker for the purposes of the Deposit Takers Act 2023.

Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 (2003 No 21)

In Schedule 2, replace clause 31(1)(a) with:

- (a) at any licensed bank; and

In Schedule 2, after clause 31(3), insert:

- (4) In this clause and clause 32, **licensed bank** means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

In Schedule 2, clause 32(1)(a) and (d), replace “registered bank in New Zealand” with “licensed bank”.

Masterton Trust Lands Act 2003 (2003 No 1 (L))

In Schedule 2, clause 10(1), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “bank”.

In Schedule 2, after clause 10(2), insert:

- (3) In this clause, **bank** means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of the Deposit Takers Act 2023 to use a name or title that includes the word “bank”.

Non-bank Deposit Takers Act 2013 (2013 No 104)

After section 13(2), insert:

- (2A) However, an application may not be made on and after section 16 of the Deposit Takers Act 2023 comes into force (*see* subpart 3 of Part 1 of Schedule 1 of that Act).

Overseas Investment Act 2005 (2005 No 82)

Replace section 111(1) with:

- (1) This section applies if a person who will be made subject to statutory management by an order under section 95 is any of the following:
 - (a) a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023):
 - (b) a covered bond SPV (within the meaning of section 404 of the Deposit Takers Act 2023):
 - (c) a licensed insurer (within the meaning of section 6 of the Insurance (Prudential Supervision) Act 2010):
 - (d) an operator of a designated FMI (within the meaning of section 5 of the Financial Market Infrastructures Act 2021).

Personal Property Securities Act 1999 (1999 No 126)

In section 103B(1)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

Replace section 103B(2) and (3) with:

- (2) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in this section (including the definitions of collateral and possession) have in this section the same meanings as in section 62A.
- (3) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of this section (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (1)(b) of this section and treating references to the grantor as references to the debtor that granted the security interest).

Pork Industry Board Act 1997 (1997 No 106)

In section 41(1), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “licensed deposit taker”.

After section 41(1), insert:

- (1A) In subsection (1), **licensed deposit taker** means a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

Primary Products Marketing Act 1953 (1953 No 10)

In section 3(7)(a), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “licensed deposit taker”.

After section 3(7), insert:

Primary Products Marketing Act 1953 (1953 No 10)—continued

(7A) In subsection (7), **licensed deposit taker** means a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

Prisoners’ and Victims’ Claims Act 2005 (2005 No 74)

Replace section 54(2) with:

(2) The bank must be a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”.

Property Law Act 2007 (2007 No 91)

In section 153(7)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

Replace section 153(8) and (9) with:

- (8) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in subsection (7) have in that subsection the same meanings as in that section.
- (9) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (7)(b) (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (7)(b) of this section and treating references to the grantor as references to the person who granted the security interest).

Protected Disclosures (Protection of Whistleblowers) Act 2022 (2022 No 20)

In Schedule 2, item relating to Banks, replace “(registered banks)” with “and other deposit takers (licensed deposit takers)”.

Public Audit Act 2001 (2001 No 10)

Replace section 16(3) with:

(3) Subsection (1)(a) does not apply to any licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023).

Replace section 18(2) with:

(2) Subsection (1) does not apply to any licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023).

Public Finance Act 1989 (1989 No 44)

In section 2(1), replace the definition of **bank** with:

bank, in relation to a bank operating within New Zealand, means—

- (a) the Reserve Bank of New Zealand; or

Public Finance Act 1989 (1989 No 44)—continued

- (b) a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

Receiverships Act 1993 (1993 No 122)

In section 30(6)(b), replace “transferred or otherwise dealt with” with “delivered, transferred, held, registered, or otherwise designated”.

Replace section 30(7) and (8) with:

- (7) Terms and expressions defined in section 62A of the Corporations (Investigation and Management) Act 1989 and used in subsection (6) have in that subsection the same meanings as in that section.
- (8) Section 62B of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (6)(b) (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (6)(b) of this section and treating references to the grantor as references to the company that granted the security interest).

Registered Architects Act 2005 (2005 No 38)

In the Schedule, clause 41(1), replace “registered banks (within the meaning of the Banking (Prudential Supervision) Act 1989)” with “licensed deposit takers (within the meaning of section 6 of the Deposit Takers Act 2023) that are authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank””.

Reserve Bank of New Zealand Act 2021 (2021 No 31)

Replace section 4(3)(b) with:

- (b) the Bank’s functions, including acting as New Zealand’s central bank, acting as a prudential regulator and supervisor of banks, other deposit takers, insurers, and other financial institutions, and monitoring the financial system; and

In section 5(1), repeal the definitions of **licensed NBDT** and **registered bank**.

In section 5(1), definition of **prudential legislation**, replace paragraph (a) with:

- (a) the Deposit Takers Act 2023:

In section 5(1), definition of **prudential legislation**, repeal paragraph (c).

In section 5(1), definition of **regulated entity**, replace paragraph (a) with:

- (a) a licensed deposit taker:

In section 5(1), definition of **regulated entity**, repeal paragraph (c).

Replace section 10(1)(e)(iii) with:

- (iii) Australian financial authorities within the meaning of section 6 of the Deposit Takers Act 2023; and

Reserve Bank of New Zealand Act 2021 (2021 No 31)—*continued*

In section 10(4), replace “section 105 of the Banking (Prudential Supervision) Act 1989” with “section 442 of the Deposit Takers Act 2023”.

Replace section 22(1)(g) with:

- (g) under the prudential legislation (for example, giving consent for the Bank to exercise certain powers, giving directions to the Bank, and giving advice to the Governor-General about putting an entity into statutory management or resolution):

In section 49(2), definition of **standards**, after paragraph (c), insert:

- (d) standards issued under subpart 2 of Part 3 of the Deposit Takers Act 2023.

In section 154(3)(e), replace “bank or licensed NBDT” with “licensed deposit taker”.

Replace section 171(3)(a) with:

- (a) subpart 7 of Part 7 of the Deposit Takers Act 2023; or

Repeal section 175(2).

Repeal section 176(5)(a).

After section 248(2), insert:

- (2A) This section is subject to section 256 of the Deposit Takers Act 2023, which provides for consolidation of financial information about the Depositor Compensation Fund only if consolidation is required by applicable financial reporting standards.

Replace section 282(2)(c) with:

- (c) Australian financial authorities within the meaning of section 6 of the Deposit Takers Act 2023:

Russia Sanctions Act 2022 (2022 No 6)

After section 31(3)(e), insert:

- (ea) the Deposit Takers Act 2023:

Repeal section 31(3)(o) and (t).

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, repeal the items relating to the Banking (Prudential Supervision) Act 1989 and the Non-bank Deposit Takers Act 2013.

In the Schedule, insert in its appropriate alphabetical order:

Deposit Takers Act 2023	128	Investigator may enter and search any place, vehicle, or thing by consent or with warrant for purposes of investigating affairs of licensed deposit taker or associated person	All (except sections 118 and 119)
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Social Security Act 2018 (2018 No 32)

Replace section 111(2) with:

- (2) **Bank account**, in this section, means an account with a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023).

State-Owned Enterprises Act 1986 (1986 No 124)

In section 30(1), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act 2023”.

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (ea), insert:

- (eb) section 169 of the Deposit Takers Act 2023; or

Tax Administration Act 1994 (1994 No 166)

In section 3(1), definition of **bank account**, paragraph (a), replace “registered bank, or with a licensed NBDT as defined in section 4 of the Non-bank Deposit Takers Act 2013” with “licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023)”.

In section 3(1), insert in its appropriate alphabetical order:

licensed bank means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023) that is authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank”

In section 25MB(7)(b), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act 2023”.

In section 32E(2)(a), replace “registered bank” with “licensed bank”.

Replace section 80KL(2)(a) with:

- (a) a licensed bank; or

In section 184A(4), replace “registered bank” with “licensed bank”.

Terrorism Suppression Act 2002 (2002 No 34)

In section 28(2), replace “registered banks” with “banks”.

Veterans’ Support Act 2014 (2014 No 56)

In Schedule 2, clause 42(3), replace “registered banks in New Zealand” with “licensed deposit takers (within the meaning of section 6 of the Deposit Takers Act 2023) that are authorised under section 428 or 429 of that Act to use a name or title that includes the word “bank””.

Wages Protection Act 1983 (1983 No 143)

In section 2, replace the definition of **financial institution** with:

Wages Protection Act 1983 (1983 No 143)—continued**financial institution—**

- (a) means a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023); and
- (b) includes the Reserve Bank of New Zealand

Westpac New Zealand Act 2011 (2011 No 1 (P))

In section 4(1), replace the definition of **Minister** with:

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Deposit Takers Act 2023

Schedule 3 Part 1: amended, on 17 February 2024, by section 12(1) of the Water Services Acts Repeal Act 2024 (2024 No 2).

Part 2**Amendments to secondary legislation****Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018 (LI 2018/101)**

In the Schedule, Part 13, clause 2, definitions of **designated issuer** and **intermediary**, replace “registered bank” with “licensed deposit taker”.

In the Schedule, Part 13, clause 2, revoke the definition of **registered bank**.

In the Schedule, Part 13, clause 2, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

Commodity Levies (Meat) Order 2021 (LI 2021/336)

In clause 3, replace the definition of **trust account** with:

trust account means an account at a licensed deposit taker within the meaning of the Deposit Takers Act 2023.

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

In regulation 2, revoke the definition of **registered bank**.

Credit Contracts and Consumer Finance Regulations 2004 (SR 2004/240)

In regulation 4AE, definition of **bank account**, replace “registered bank” with “licensed deposit taker”.

Deer Industry New Zealand Regulations 2004 (SR 2004/323)

In regulation 16(1), replace “registered bank (within the meaning of the Reserve Bank of New Zealand Act 1989)” with “licensed deposit taker (within the meaning of the Deposit Takers Act 2023)”.

Electronic Identity Verification Regulations 2013 (SR 2013/9)

Replace regulation 4(1)(c) with:

- (c) every licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023:

Revoke regulation 4(1)(f).

Financial Markets Conduct Regulations 2014 (LI 2014/326)

In regulation 34(4), definition of **required or permitted information**, after paragraph (b), insert:

- (c) standards made under section 88 of the Deposit Takers Act 2023.

Financial Service Providers (Registration) Regulations 2020 (LI 2020/316)

In regulation 14(2), example, replace “The threshold rules do not apply to licensed providers, including registered banks, licensed supervisors, licensed insurers, persons who hold, or are authorised bodies under, a market services licence, and licensed NBDTs” with “The threshold rules do not apply to licensed providers, including licensed deposit takers, licensed supervisors, licensed insurers, and persons who hold, or are authorised bodies under, a market services licence”.

In regulation 23(2)(a)(i), first example, replace “registered bank” with “licensed deposit taker”.

Insolvency (Personal Insolvency) Regulations 2007 (SR 2007/333)

Replace regulation 6(2)(ha) with:

- (ha) the following details for each account held by the debtor (solely or with other persons) with any deposit taker in the previous 5 years:
 - (i) the account name:
 - (ii) the account number:
 - (iii) the deposit taker and branch of the deposit taker:
 - (iv) the name of each signatory:

Replace regulation 6(4) with:

- (4) In subclause (2)(ha), **deposit taker** means a licensed deposit taker within the meaning of section 6 of the Deposit Takers Act 2023 or a body corporate or other organisation of the same, or substantially the same, nature operating outside New Zealand.

Lawyers and Conveyancers Act (Trust Account) Regulations 2008 (SR 2008/183)

In regulation 39(2)(b), replace “a financial institution within the meaning of the Banking (Prudential Supervision) Act 1989” with “a licensed deposit taker within the meaning of the Deposit Takers Act 2023”.

Overseas Investment Regulations 2005 (SR 2005/220)

Replace regulation 3C(5A)(a) with:

- (a) is carried on by a licensed deposit taker (as defined in section 6 of the Deposit Takers Act 2023) and the value of the deposit taker's assets is at least \$80 billion; or

Securities Transfer (Approval of Austraclear New Zealand Electronic Registries Interface System) Order 2010 (SR 2010/4)

In the Schedule, clause 1, revoke the definition of **registered bank**.

In the Schedule, clause 1, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in section 6 of the Deposit Takers Act 2023

In the Schedule, replace clause 2(o)(i) with:

- (i) licensed deposit takers, subsidiaries and holding companies of licensed deposit takers, and other subsidiaries of holding companies of licensed deposit takers:

Social Security Regulations 2018 (LI 2018/202)

In the heading to regulation 221, replace “**banks**” with “**deposit takers**”.

In regulation 221(1) and (3), replace “bank” with “deposit taker” in each place.

Replace regulation 221(2) with:

- (2) In this regulation, **deposit taker** means any of the following:
 - (a) a licensed deposit taker (within the meaning of section 6 of the Deposit Takers Act 2023):
 - (b) the Reserve Bank of New Zealand continued under the Reserve Bank of New Zealand Act 2021, but only in relation to an account maintained by that bank for an employee of that bank.

In regulation 221(3), replace “**bank**” with “**deposit taker**”.

In regulation 221(4), replace “bank is, for the purposes of this regulation, taken to be held by the bank” with “deposit taker is, for the purposes of this regulation, taken to be held by the deposit taker”.

In regulation 221(4)(a), replace “joint bank account” with “joint account”.

Notes

1 *General*

This is a consolidation of the Deposit Takers Act 2023 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Water Services Acts Repeal Act 2024 (2024 No 2): section 12(1)