

Version
as at 1 July 2022



Crown Entities (Financial Powers) Regulations 2005 (SR 2005/68)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 21st day of March 2005

Present:

Her Excellency the Governor-General in Council

Pursuant to section 173 of the Crown Entities Act 2004, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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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.

These regulations are administered by the Treasury.

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Regulations

1 Title

These regulations are the Crown Entities (Financial Powers) Regulations 2005.

2 Commencement

These regulations come into force on 1 April 2005.

3 Interpretation

In these regulations, unless the context otherwise requires, **Act** means the Crown Entities Act 2004.

Bank accounts

4 Purpose of regulations 5 to 8

The purpose of regulations 5 to 8 is to provide for the establishment, maintenance, and operation of bank accounts by Crown entities.

5 Minimum requirement for bank accounts

- (1) The minimum requirement in order to be a bank account under these regulations and sections 158 and 161 of the Act is that there is a contract with a registered bank, registered building society, or a bank outside New Zealand that—
- (a) contains a covenant by the bank or building society to keep a record of the amount it owes its account customer by reason of the deposit of

- money with the bank or building society for the account of its account customer; and
- (b) provides that that amount is repayable in whole or in any part upon demand by the account customer; and
 - (c) does not comprise—
 - (i) a cash or term deposit; or
 - (ii) a fund; or
 - (iii) any other form of investment in the debt securities of the bank or building society consisting of a specified amount of debt that is repayable only in whole.
- (2) Other contracts or accounts are not bank accounts for the purposes of these regulations or sections 158 and 161 of the Act.

6 Minimum requirement for banks outside New Zealand

- (1) The minimum requirement in order to be a bank outside New Zealand under these regulations and section 158 of the Act is that the financial institution must be entitled by the laws of the jurisdictions in which it operates to include, in its name or title,—
- (a) the word “bank”, “banker”, or “banking”; or
 - (b) any of those words as part of another word; or
 - (c) a translation of those words into another language (whether or not the translation of those words is part of any other word).
- (2) Other financial institutions are not banks outside New Zealand for the purposes of these regulations or section 158 of the Act.

7 Credit-rating test for registered banks and registered building societies

- (1) A registered bank or registered building society satisfies the credit-rating test referred to in section 158(1)(a) of the Act only if—
- (a) it satisfies one of the specified tests and does not have a credit rating assigned to it by any other specified credit-rating organisation; or
 - (b) it satisfies the specified test that applies to each of the specified credit-rating organisations that have assigned a credit rating to it.
- (2) The following are specified tests for the purposes of section 158 of the Act:
- (a) Standard & Poor’s Ratings Group (or its successors or assigns) rates the credit of the relevant registered bank or registered building society “A–” or higher or, if that credit is short term, “A–1” or higher; or
 - (b) Moody’s Investors Service, Inc (or its successors or assigns) rates the credit of the relevant registered bank or registered building society “A3” or higher or, if that credit is short term, “Prime–1” or higher.
- (3) In this regulation,—

credit means—

- (a) long-term unsubordinated unsecured New Zealand dollar debt obligations payable in New Zealand; or
- (b) if a registered bank or registered building society does not issue long-term debt as set out in paragraph (a), short-term unsubordinated unsecured New Zealand dollar debt obligations payable in New Zealand

specified credit-rating organisation means a credit-rating organisation referred to in a specified test

specified test means a credit-rating test that is specified in—

- (a) subclause (2); or
- (b) a notice in the *Gazette* published by the Minister of Finance under section 158(1)(a) of the Act.

8 Bank account at bank outside New Zealand

- (1) A bank account at a bank outside New Zealand is approved for the purposes of section 158(2)(b)(ii) of the Act if—
 - (a) the bank account comprises debt owed and payable in New Zealand currency; and
 - (b) except as set out in subclause (2), the credit of the bank satisfies the credit-rating test for registered banks and registered building societies stipulated in regulation 7(1) as if it were a registered bank or a registered building society; and
 - (c) the laws of the jurisdiction under which the bank operates the bank account do not discriminate between classes of unsecured creditors except upon grounds, and only to the extent, set out in a subordination covenant; and
 - (d) the central bank of the jurisdiction in which the bank operates the bank account is a shareholder in the Bank for International Settlements.
- (2) In subclause (1)(b), **credit** means—
 - (a) long-term unsubordinated unsecured foreign currency debt obligations payable in the home jurisdiction of that foreign currency; or
 - (b) if a bank outside New Zealand does not issue long-term debt as set out in paragraph (a), short-term unsubordinated unsecured foreign currency debt obligations payable in the home jurisdiction of that foreign currency.

Acquisition of debt securities

9 Credit-rating test for issuer of debt securities

- (1) A registered bank, or any other entity, satisfies the credit-rating test referred to in section 161(1)(a) of the Act only if—

- (a) it satisfies one of the specified tests and does not have a credit rating assigned to it by any other specified credit-rating organisation; or
 - (b) it satisfies the specified test that applies to each of the specified credit-rating organisations that have assigned a credit rating to it.
- (2) The following are specified tests for the purposes of section 161(1)(a) of the Act:
- (a) Standard & Poor’s Ratings Group (or its successors or assigns) rates the debt securities to be issued by the relevant registered bank, or other entity, to the relevant Crown entity “A–” or higher or, if those debt securities are short term, “A–1” or higher; or
 - (b) Moody’s Investors Service, Inc (or its successors or assigns) rates the debt securities to be issued by the relevant registered bank, or other entity, to the relevant Crown entity “A3” or higher or, if those debt securities are short-term, “Prime–1” or higher.
- (3) In this regulation,—
- specified credit-rating organisation** means a credit-rating organisation referred to in a specified test
- specified test** means a credit-rating test that is specified in—
- (a) subclause (2); or
 - (b) a notice in the *Gazette* published by the Minister of Finance under section 161(1)(a) of the Act.

10 Period of grace

- (1) There is a period of grace if a change in the credit rating assigned to a debt security (**the debt security**) by a credit-rating organisation results in a registered bank, or any other entity, ceasing to satisfy the credit-rating test stipulated in regulation 9(1).
- (2) The period of grace ends on the earlier of—
 - (a) 2 months after the registered bank, or other entity, ceases to satisfy the credit-rating test stipulated in regulation 9(1); or
 - (b) a date specified by the Minister of Finance and notified to the relevant Crown entity in writing.
- (3) From the time that the Crown entity becomes aware that the registered bank, or other entity, ceases to satisfy the credit-rating test stipulated in regulation 9(1), the Crown entity must—
 - (a) diligently monitor the credit rating of the debt security; and
 - (b) take all prudent steps necessary to avoid loss to the Crown entity, including (if necessary) transferring the debt security to a third party.
- (4) By the end of the period of grace the Crown entity must not hold the debt security.

Borrowing

11 Definitions relating to borrowing

For the purposes of these regulations and section 162 of the Act,—

accepting debt on assignment (as that phrase is used in the definition of borrow in section 136(1) of the Act) includes a Crown entity (**entity A**) recording the indebtedness of another entity (whether or not a Crown entity) in the financial statements that entity A is required to prepare in accordance with section 154 of the Act, whether or not entity A incurs the legal obligation to repay that indebtedness by way of novation or otherwise

borrow—

- (a) includes the issuance of any security or any other financial instrument; but
- (b) does not include an operating lease or bailment by way of hire.

12 Authority for school board to borrow

- (1) A school board may, in any calendar year, borrow any amount of money it thinks fit from any sources it thinks fit provided that the total annual cost to the board in repaying all outstanding borrowings (including both principal and interest repayments) is equal to or less than one-tenth of the value of the grants determined by the Minister of Education to be paid to the board for operational activities for that year.
- (2) A school board may borrow in accordance with subclause (1) without the consent of either the Minister of Finance or the Minister of Education.

Regulation 12 heading: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 12(1): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Regulation 12(2): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

13 Authority for Health New Zealand and Māori Health Authority to borrow

- (1) Health New Zealand or the Māori Health Authority may borrow money from—
 - (a) the Residual Health Management Unit; or
 - (b) a registered bank or registered building society that satisfies the credit-rating test stipulated in regulation 7(1), provided that the total amount of any loans from those banks or building societies does not exceed the provider arm planned monthly revenue as defined in the New Zealand Health Plan; or
 - (c) the Energy Efficiency and Conservation Authority .
- (2) Money may be borrowed under subclause (1)(b) only for the purpose of funding working capital.

- (3) Money may be borrowed under subclause (1)(c) only for the purpose of investment in energy efficiency (within the meaning of that term in section 3 of the Energy Efficiency and Conservation Act 2000).

- (4) For the purposes of this regulation,—

Energy Efficiency and Conservation Authority means the Energy Efficiency and Conservation Authority established by section 20 of the Energy Efficiency and Conservation Act 2000

Health New Zealand has the meaning in section 4 of the Pae Ora (Healthy Futures) Act 2022

Māori Health Authority has the meaning in section 4 of the Pae Ora (Healthy Futures) Act 2022

New Zealand Health Plan has the meaning in section 50 of the Pae Ora (Healthy Futures) Act 2022.

Regulation 13 heading: amended, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(1): amended, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(1)(b): amended, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(1)(c): amended, on 26 October 2006, by regulation 4 of the Crown Entities (Financial Powers) Amendment Regulations 2006 (SR 2006/294).

Regulation 13(4) **Crown funding agreement**: revoked, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(4) **district health board**: revoked, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(4) **Health New Zealand**: inserted, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(4) **Māori Health Authority**: inserted, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(4) **New Zealand Health Plan**: inserted, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Regulation 13(4) **Residual Health Management Unit**: revoked, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

Guarantees and indemnities

14 Permitted guarantees and indemnities

- (1) A Crown entity may give a guarantee—
- (a) that is limited to a covenant to perform personally another entity's non-monetary covenant to perform; or
 - (b) in respect of any of the contracts or instruments referred to in subclauses (2) and (3).
- (2) A Crown entity may give an indemnity relating to, and contained in,—

- (a) a loan agreement lawfully entered into by the Crown entity as borrower, or an agreement ancillary to that loan agreement:
 - (b) a contract to lease, or a lease of, real property entered into by the Crown entity as lessee, tenant, or the assignee of the lessee or tenant:
 - (c) a contract (including a deed) executed by the Crown entity to settle litigation brought against it by a third party:
 - (d) a contract of bailment by way of hire executed by the Crown entity in the ordinary course of its operations:
 - (e) a contract of insurance entered into by the Crown entity as the insured party in the ordinary course of its operations:
 - (f) a contract for the sale and purchase of goods entered into by the Crown entity in the ordinary course of its operations:
 - (g) a contract for the procurement of services entered into by the Crown entity in the ordinary course of its operations:
 - (h) a contract for the purchase of an intangible (including intellectual property or a licence of intellectual property) entered into by the Crown entity in the ordinary course of its operations.
- (3) An indemnity given by a Crown entity that relates to a class of contract referred to in subclause (2)(d) to (h) may be contained in an ancillary contract or instrument (including a trust) relating to that class of contract, but only if that indemnity is contained in the standard printed terms and conditions of the Crown entity or the counterparty as the case may be.

Derivatives

Heading: replaced, on 1 December 2014, by regulation 4 of the Crown Entities (Financial Powers) Amendment Regulations 2014 (LI 2014/322).

15 Permitted derivatives

- (1) A Crown entity may enter into an agreement constituting a derivative if it is one of the following kinds:
- (a) a foreign exchange transaction with a registered bank or registered building society that satisfies the credit-rating test stipulated in regulation 7(1), or a bank outside New Zealand that satisfies the credit-rating test stipulated in regulation 8(1)(b), for the purpose of—
 - (i) procuring foreign exchange (including negotiable instruments and other documentary choses in action) for use by Crown entity members, officials, or employees while in the country of that foreign currency or while en route to that country:
 - (ii) procuring foreign exchange in order to discharge a liability arising under any of the classes of contract or instrument referred to in regulation 14:

- (iii) procuring foreign exchange in order to—
 - (A) deposit funds into a bank account:
 - (B) invest in debt securities:
 - (C) repay borrowing:
 - (D) pay a guarantee or indemnity:
 - (b) a futures contract having the sole purpose of covering any foreign exchange transaction authorised by this regulation:
 - (c) a foreign exchange transaction undertaken with a foreign exchange dealer on a cash-for-cash basis:
 - (d) the sale and purchase of goods or intangibles (including intellectual property rights, but not including securities) that are not traded in the commodities or the capital markets, delivery of which is to occur in the future:
 - (e) an option to purchase or lease, or renew the lease of, real property:
 - (f) an option to purchase or bail, or to renew the bailment by way of hire of, goods that are not traded in the commodities markets:
 - (g) a covenant to assign intellectual property rights, or other property rights, contained in a contract of employment:
 - (h) a contract to acquire debt securities lawfully entered into in accordance with section 161 of the Act and, if applicable, regulation 9, where delivery must take place in the future.
- (2) A Crown entity may procure foreign exchange for the purposes set out in sub-clause (1)(a)(iii) only if the bank account, investment, borrowing, guarantee, or indemnity is—
- (a) in a currency other than New Zealand currency; and
 - (b) authorised by—
 - (i) the Act; or
 - (ii) the Minister of Finance (either individually or jointly with a responsible Minister).

Regulation 15 heading: amended, on 1 December 2014, by regulation 5(1) of the Crown Entities (Financial Powers) Amendment Regulations 2014 (LI 2014/322).

Regulation 15(1): amended, on 1 December 2014, by regulation 5(2) of the Crown Entities (Financial Powers) Amendment Regulations 2014 (LI 2014/322).

Rebecca Kitteridge,
Acting for Clerk of the Executive Council.

Notes

1 *General*

This is a consolidation of the Crown Entities (Financial Powers) Regulations 2005 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*

Pae Ora (Healthy Futures) Act 2022 (2022 No 30): section 104

Education and Training Act 2020 (2020 No 38): section 668

Crown Entities (Financial Powers) Amendment Regulations 2014 (LI 2014/322)

Crown Entities (Financial Powers) Amendment Regulations 2006 (SR 2006/294)