

Version
as at 1 July 2022



Non-bank Deposit Takers (Declared-out Entities) Regulations 2015 (LI 2015/9)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 2nd day of February 2015

Present:

His Excellency the Governor-General in Council

Pursuant to section 73(1)(d) of the Non-bank Deposit Takers Act 2013, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Finance, given after having regard to the matters in section 73(2) of that Act, and in accordance with a recommendation of the Reserve Bank of New Zealand made—
 - (i) after taking into account the principles in section 8 of that Act; and
 - (ii) after having regard to the matters in section 73(2) of that Act; and
 - (iii) after the consultation required by section 76(1)(a) and (b) of that Act.

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 Reserve Bank of New Zealand.

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Regulations

- 1 Title**
These regulations are the Non-bank Deposit Takers (Declared-out Entities) Regulations 2015.
- 2 Commencement**
These regulations come into force on 1 April 2015.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Non-bank Deposit Takers Act 2013

call debt security has the same meaning as in regulation 5(1) of the Financial Markets Conduct Regulations 2014

company means a company, or an overseas company, within the meaning of section 2(1) of the Companies Act 1993

credit—

- (a) means a right granted by a person to another person to—
 - (i) defer payment of a debt; or
 - (ii) incur a debt and defer its payment; or
 - (iii) purchase property or services and defer payment for that purchase (in whole or in part); but
- (b) does not include credit provided under a contract described in section 15(1)(a) or (b) of the Credit Contracts and Consumer Finance Act 2003

entity means any of the following:

- (a) a company or any other body corporate:
- (b) a corporation sole:
- (c) an unincorporated body (including, without limitation, a partnership)

equity security has the same meaning as in section 8(2) of the Financial Markets Conduct Act 2013

registered bank has the same meaning as in section 2(1) of the Banking (Prudential Supervision) Act 1989.

Regulation 3 **call debt security**: replaced, on 15 March 2021, by regulation 4 of the Non-bank Deposit Takers (Declared-out Entities) Amendment Regulations 2020 (LI 2020/303).

Regulation 3 **registered bank**: amended, on 1 July 2022, by section 300(2) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

4 Transitional, savings, and related provisions

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

Intra-group funding vehicles

5 Definitions relating to intra-group funding vehicles

In this regulation and regulation 6,—

associate has the same meaning as in GAAP

costs and expenses does not include costs and expenses that are attributable to repaying debt securities

generally accepted accounting practice or GAAP,—

- (a) for an intra-group funding vehicle incorporated or established in New Zealand or in a jurisdiction other than those listed in paragraph (b), has the same meaning as in section 8 of the Financial Reporting Act 2013:
- (b) for an intra-group funding vehicle incorporated or established in Australia, Canada, Hong Kong, Singapore, the United Kingdom, the United States of America, France, Germany, or India, means generally accepted accounting practice in the jurisdiction in which that intra-group funding vehicle is incorporated or established

group means a group comprising an entity and its subsidiaries

group member, in relation to an intra-group funding vehicle, means any member of the group of which the intra-group funding vehicle is a member

intra-group funding vehicle means an entity that carries on the business of borrowing and lending by—

- (a) making 1 or more NBDT regulated offers of debt securities; and
- (b) using funds raised to provide credit to, or to provide credit to and acquire equity securities in, 1 or more specified persons

joint venture has the same meaning as in GAAP

net proceeds, in relation to an NBDT regulated offer of debt securities, means all funds raised from the issue of debt securities under that offer less the costs and expenses of the intra-group funding vehicle attributable to that offer

specified person, in relation to an intra-group funding vehicle or any other group member (in either case, **A**), means—

- (a) an associate of A:
- (b) a person with whom A is carrying on a joint venture:
- (c) any other group member

specified person outside the group means a person who is not a group member but who is—

- (a) an associate of a group member; or
- (b) a person with whom a group member is carrying on a joint venture

subsidiary has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

6 Intra-group funding vehicle not NBDT for purposes of Act in certain circumstances

- (1) An intra-group funding vehicle to which all of the circumstances in subclause (3) apply is declared not to be an NBDT for the purposes of the Act.

- (2) The declaration in subclause (1) applies to the intra-group funding vehicle at any time that all of the circumstances in subclause (3) apply to the intra-group funding vehicle, but at no other time.
- (3) The circumstances are that—
 - (a) the intra-group funding vehicle uses an amount equal to or greater than 100% of the net proceeds from all debt securities issued by it under NBDT regulated offers to provide credit to, or to provide credit to and acquire equity securities in, 1 or more specified persons; and
 - (b) neither the intra-group funding vehicle nor any other group member carries on the business of lending to any person other than to 1 or more specified persons; and
 - (c) if the intra-group funding vehicle or other group member (in either case, **A**) carries on the business of lending to a specified person outside the group (**B**), for so long as any credit so provided to B remains unpaid, B—
 - (i) does not carry on the business of lending; or
 - (ii) carries on the business of lending only to A; and
 - (d) if at any time (whether before, on, or after 1 April 2015) the intra-group funding vehicle has used any of the net proceeds from an NBDT regulated offer of debt securities for something other than to provide credit to or acquire equity securities in 1 or more specified persons, the intra-group funding vehicle has repaid debt securities issued under the offer or offers concerned to an amount equal to or greater than the net proceeds otherwise used (together with all interest (if any) on those repaid debt securities).
- (4) Subclause (3)(c) applies only in respect of credit provided on or after 1 April 2015.
- (5) In subclause (3),—
 - (a) the provision of credit (by the intra-group funding vehicle or any other group member) that is merely incidental or ancillary to the business of the intra-group funding vehicle or any other group member does not, in itself, amount to **carrying on the business of lending** for the purposes of paragraph (b) or (c):
 - (b) the provision of credit by B that is merely incidental or ancillary to the business of B does not, in itself, amount to **carrying on the business of lending** for the purposes of paragraph (c)(i) or (ii).

Payment facility providers

7 Definitions relating to payment facility providers

In this regulation and regulation 8,—

bank means—

- (a) a registered bank; or
- (b) a bank that is authorised to accept deposits under the law of Australia, Canada, Hong Kong, Singapore, the United Kingdom, the United States of America, France, Germany, or India

carry on the business of borrowing, in relation to a payment facility provider, does not include borrowing that is merely incidental or ancillary to the business of the payment facility provider

net amount, in relation to all call debt securities issued by the payment facility provider under NBDT regulated offers and a particular day, means—

- (a) an amount equal to the total outstanding amount of principal sums under those call debt securities (on that particular day); or
- (b) if the payment facility provider's trust account so operates, an amount equal to the reported net balance of all call debt securities outstanding on the previous day

payment facility provider means an entity that—

- (a) carries on the business of borrowing in New Zealand solely by issuing call debt securities in the form of prepaid instruments offered under 1 or more NBDT regulated offers of debt securities; and
- (b) in respect of those call debt securities, does not pay interest, or any consideration in the nature of interest, to product holders; and
- (c) does not provide any other financial service in New Zealand

prepaid instrument, in respect of a call debt security, means a card or any other instrument that has a preloaded value that the product holder can use to purchase goods and services or withdraw money

product holder has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

trust account means an account at a bank that is in the payment facility provider's name and that is designated as a trust account.

8 Payment facility provider not NBDT for purposes of Act in certain circumstances

- (1) A payment facility provider to which all of the circumstances in subclause (3) apply is declared not to be an NBDT for the purposes of the Act.
- (2) The declaration in subclause (1) applies to the payment facility provider at any time that all of the circumstances in subclause (3) apply to the payment facility provider, but at no other time.
- (3) The circumstances are that—
 - (a) the payment facility provider maintains a trust account with a bank; and

- (b) the payment facility provider holds an amount equal to or greater than the net amount in that trust account on trust for product holders of all call debt securities issued by the payment facility provider under NBDT regulated offers.

Special purpose vehicles

9 Definitions relating to special purpose vehicles

In this regulation and regulations 10 and 11,—

carry on the business of lending, in relation to a special purpose vehicle, does not include the provision of credit that is merely incidental or ancillary to the business of the special purpose vehicle

condition of registration, in relation to a registered bank, means a condition of registration imposed on the registered bank by the Reserve Bank of New Zealand (*see* section 74 of the Banking (Prudential Supervision) Act 1989)

financial product has the same meaning as in section 7 of the Financial Markets Conduct Act 2013

instruments, in relation to a special purpose vehicle, means debt securities (including regulatory capital instruments in the form of debt securities) issued by the special purpose vehicle under NBDT regulated offers

outstanding principal sums, in respect of all instruments, does not include any amount written off or converted into equity securities in accordance with the terms of an instrument

regulatory capital instrument means a financial product that a registered bank may treat, under a condition of registration, as a capital instrument for the purposes of a capital ratio

special purpose vehicle means a company that—

- (a) is registered under the Companies Act 1993; and
- (b) operates for the purpose of raising regulatory capital for a registered bank; and
- (c) raises regulatory capital for the registered bank through either or both of the following arrangements:
 - (i) by issuing debt securities under 1 or more NBDT regulated offers and using the funds raised to acquire regulatory capital instruments from the bank;
 - (ii) by issuing regulatory capital instruments in the form of debt securities under 1 or more NBDT regulated offers and using the funds raised to acquire debt or equity securities from the bank.

Regulation 9 **condition of registration**: amended, on 1 July 2022, by section 300(2) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

10 Application of these regulations to special purpose vehicles

These regulations apply to a special purpose vehicle that would, but for these regulations, be an NBDT for the purposes of the Act.

11 Special purpose vehicle not NBDT for purposes of Act in certain circumstances

- (1) A special purpose vehicle to which all of the circumstances in subclause (3) apply is declared not to be an NBDT for the purposes of the Act.
- (2) The declaration in subclause (1) applies to the special purpose vehicle at any time that all of the circumstances in subclause (3) apply to the special purpose vehicle, but at no other time.
- (3) The circumstances are that—
 - (a) the special purpose vehicle uses an amount equal to or greater than 95% of the total of the outstanding principal sums under all instruments to acquire debt or equity securities in the registered bank; and
 - (b) the special purpose vehicle does not carry on the business of lending to any person other than the registered bank; and
 - (c) the special purpose vehicle complies with all requirements (if any) that apply to it as a special purpose vehicle under any condition of registration that applies to the registered bank; and
 - (d) if at any time (whether before, on, or after 1 April 2015) the special purpose vehicle has used a total of more than 5% of the outstanding principal sums under all instruments for something other than to acquire debt or equity securities in the registered bank, the special purpose vehicle has repaid the instruments in an amount equal to or greater than the outstanding principal sums otherwise used (together with all interest (if any) on those repaid instruments).

*Charities***12 Definitions relating to charities**

In this regulation, regulations 13 and 14, and the Schedule,—

accounting period has the same meaning as in section 5(1) of the Financial Reporting Act 2013

associated person, in relation to a charity, means—

- (a) a person that has the power, directly or indirectly, to appoint 25% or more of the governing body of the charity, or that directly or indirectly controls the management of the charity:
- (b) a person that has a direct or an indirect relevant interest in 20% or more of the voting rights in the charity:

- (c) a person whose governing body the charity has the power, directly or indirectly, to appoint 25% of, or whose management is controlled, directly or indirectly, by the charity:
- (d) a person in whose voting rights the charity has a direct or an indirect relevant interest of 20% or more:
- (e) any other person whose governing body a person described in paragraph (a) or (b) has the power, directly or indirectly, to appoint 25% of, or whose management is controlled, directly or indirectly, by a person described in paragraph (a) or (b):
- (f) any other person in whose voting rights a person described in paragraph (a) or (b) has a direct or an indirect relevant interest of 20% or more

balance date means the balance date determined in accordance with section 41(3) to (7) of the Charities Act 2005

charity means a society, an institution, or the trustees of a trust that is registered as a charitable entity under the Charities Act 2005

excluded debt security—

- (a) means a debt security issued under an NBDT regulated offer that did not require disclosure by way of a registered prospectus, investment statement, or product disclosure statement; but
- (b) does not include a debt security issued in reliance on—
 - (i) the Securities Act (Charity Debt Securities) Exemption Notice 2013 (or any corresponding previous notice); or
 - (ii) any other notice issued under the Securities Act 1978 or the Financial Markets Conduct Act 2013 that, with or without modification, replaces or corresponds to the Securities Act (Charity Debt Securities) Exemption Notice 2013

investment statement has the same meaning as in clause 16(2) of Schedule 4 of the Financial Markets Conduct Act 2013

outstanding debt securities means debt securities that remain unpaid

product disclosure statement has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

registered prospectus has the same meaning as in clause 16(2) of Schedule 4 of the Financial Markets Conduct Act 2013

relevant interest, in relation to a voting right, means—

- (a) the legal or beneficial ownership of the security conferring the voting right; or
- (b) the power to exercise, or control the exercise of, the voting right; or
- (c) the power to acquire or dispose of the security conferring the voting right; or

- (d) the power to control the acquisition or disposition by another person of the security conferring the voting right; or
- (e) the powers referred to in paragraphs (b) to (d) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the security conferring the voting right.

13 Application of these regulations to charities

These regulations apply to a charity that would, but for these regulations, be an NBDT for the purposes of the Act.

14 Charity not NBDT for purposes of Act in certain circumstances

- (1) A charity to which all of the circumstances in subclause (3) apply is declared not to be an NBDT for the purposes of the Act.
- (2) The declaration in subclause (1) applies to the charity at any time that all of the circumstances in subclause (3) apply to the charity, but at no other time.
- (3) The circumstances are that—
 - (a) either or both of the following apply to the charity:
 - (i) immediately after the issue of debt securities by the charity under an NBDT regulated offer, the total amount of principal sums owing under outstanding debt securities (other than excluded debt securities) issued by the charity or by any associated person of the charity under NBDT regulated offers (including under those that are the subject of the current issue, unless they are excluded debt securities) does not exceed \$15 million;
 - (ii) the outstanding balance of credit owed to the charity by others, excluding interest and excluding credit owed by associated persons, does not exceed \$5 million; and
 - (b) the charity notifies the Bank, before the date that the charity starts operating on the basis that it is not an NBDT for the purposes of the Act, that it intends to start operating on that basis; and
 - (c) for each accounting period for which the charity intends to continue operating on the basis that it is not an NBDT for the purposes of the Act (**accounting period B**), the charity notifies the Bank, by the date that is 1 month after its balance date for the immediately preceding accounting period (**accounting period A**), that—
 - (i) either or both of the circumstances in paragraph (a) apply to the charity; and
 - (ii) the charity intends to continue operating on the basis that it is not an NBDT for the purposes of the Act in accounting period B.
- (4) If a charity does not notify the Bank in accordance with subclause (3)(c), subclause (1) no longer applies to the charity for the period beginning on the day

after the last date for notification under subclause (3)(c) and ending on the last day of accounting period B.

Public Trust

15 Definitions relating to Public Trust

In this regulation and regulation 16,—

call account means an account opened with Public Trust by an investor in call debt securities issued by Public Trust

carry on the business of new lending does not include—

- (a) the provision of credit secured by a mortgage entered into on or before 31 March 2015 (whether the credit is provided before, on, or after that date); or
- (b) any provision of credit that is merely incidental or ancillary to the business of Public Trust

existing call account means a call account opened on or before 31 March 2015

existing debt securities means debt securities issued by Public Trust and that remain unpaid at the close of 31 March 2015

Public Trust has the same meaning as in section 4 of the Public Trust Act 2001.

16 Public Trust not NBDT for purposes of Act in certain circumstances

- (1) Public Trust is declared not to be an NBDT for the purposes of the Act if both of the circumstances in subclause (2) apply to it.
- (2) The circumstances are that, at all times on and from 1 April 2015,—
 - (a) Public Trust does not make any NBDT regulated offers of debt securities (but *see* subclause (3)); and
 - (b) Public Trust does not carry on the business of new lending.
- (3) Subclause (2)(a) does not apply to prevent Public Trust from—
 - (a) accepting unsolicited requests to renew existing debt securities on the same terms or with minor variations to terms; or
 - (b) accepting unsolicited subscriptions on or after 1 April 2015 for call debt securities in existing call accounts.
- (4) Subclause (1) no longer applies to Public Trust if (and from the earliest date on or after 1 April 2015 that) Public Trust—
 - (a) makes an NBDT regulated offer of debt securities (other than as permitted by subclause (3)); or
 - (b) commences carrying on the business of new lending.

Schedule

Transitional, savings, and related provisions

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Transitional provisions relating to making of regulations

1 Additional circumstance applies until 1 October 2015 for charities to be declared out

- (1) In subclause (2), **transition period** means the period beginning on 1 April 2015 and ending on the close of 30 September 2015.
- (2) During the transition period, the references in regulation 14(1) and (2) to all of the circumstances in regulation 14(3) must be treated as including a reference to subclause (3) of this clause.
- (3) The circumstance is that the charity displays a statement to the effect that the charity is declared not to be an NBDT for the purposes of the Act, prominently and at all reasonable times, on the home page of an Internet site maintained by or on behalf of the charity.
- (4) The statement may be removed from the Internet site after 30 September 2015, and must be removed if the declaration in regulation 14(1) no longer applies to the charity.

2 Initial notification not required for charities meeting notification conditions of exemption under Deposit Takers (Charities) Exemption Notice 2014 at commencement

Regulation 14(3)(b) does not apply to a charity that,—

- (a) before 1 April 2015,—
 - (i) notified the Bank under clause 6(a) or 8(1)(a) of the Deposit Takers (Charities) Exemption Notice 2014 (the **Charities Notice**) that it was operating in reliance on the exemption in clause 5 or 7 of the Charities Notice; and
 - (ii) if required to do so by clause 6(b) or 8(1)(b) of the Charities Notice, notified the Bank in accordance with that clause that it intended to continue operating in reliance on the exemption; and
- (b) immediately prior to 1 April 2015, was continuing to operate in reliance on the exemption.

Michael Webster,
Clerk of the Executive Council.

Notes

1 *General*

This is a consolidation of the Non-bank Deposit Takers (Declared-out Entities) Regulations 2015 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*

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(2)

Non-bank Deposit Takers (Declared-out Entities) Amendment Regulations 2020 (LI 2020/303)