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Reserve Bank of New Zealand Act
1989

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered by the Reserve Bank of New Zealand

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An Act to consolidate and amend the law constituting and relating to the Reserve Bank of New Zealand and, in particular,—

- (a) To provide, while continuing to recognise the Crown’s right to determine economic policy, for the Reserve Bank of New Zealand, as the central bank, to be responsible for formulating and implementing monetary policy designed to promote stability of the general level of prices; and**
- (b) To confer on the Reserve Bank of New Zealand certain other functions and powers; and**
- (c) To repeal the Reserve Bank of New Zealand Act 1964**

1 Short Title and commencement

- (1)** This Act may be cited as the Reserve Bank of New Zealand Act 1989.
- (2)** Except as provided in section 181(5) and (9) of this Act, this Act shall come into force on the 1st day of February 1990.

Subsection (2) was amended, as from 24 March 1995, by section 12 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5) by omitting the words “sections 85, 87 to 92, and”.

2 Interpretation

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

Bank note or **note** means any negotiable instrument used or circulated, or intended for use or circulation, as currency

banking group has the meaning given to it in the Orders in Council made under section 81

banking group: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

clearing house means a person that provides clearing or settlement services for a payment system

clearing house: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Deputy Chief Executive means, if 1 person is appointed under this Act as the Deputy Governor of the Bank, that person, and if 2 persons are appointed under this Act as Deputy Governors of the Bank, the Deputy Governor designated by the Board as the Deputy Chief Executive

Deputy Governor means, if 1 person is appointed under this Act as the Deputy Governor of the Bank, that person, and if 2 persons are appointed under this Act as Deputy Governors, each of those persons

designated payment system has the meaning set out in section 156L

designated payment system: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

director, except in relation to the Bank, means—

- (a) a person occupying the position of director by whatever name called:
- (b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

director: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

disclosure statement means the document referred to in section 81(2)(a)

disclosure statement: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Document means a document in any form, whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) Any writing on any material:
- (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) Any book, map, plan, graph, or drawing:
- (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so

as to be capable (with or without the aid of some other equipment) of being reproduced:

Financial institution means any person including a body of persons whether incorporated or not, who carries on the business of borrowing and lending money, or providing financial services, or both, and without limiting the generality of the foregoing includes—

- (a) A life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908; and includes any branch, division, or office of that company; and
- (b) A building society as defined in section 2 of the Building Societies Act 1965; and
- (c) A registered bank; and
- (d) A specified person or class of persons (including a body or bodies of persons, whether incorporated or not) who is or are declared by the Governor-General, by Order in Council, to be a financial institution or institutions for the purposes of this Act:

Financial institution: paragraph (d) of this definition was amended, as from 1 November 2006, by section 4 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51) by omitting the words “engaged in the business of borrowing and lending money, or providing financial services, or both,”

financial year has the meaning given to it by section 157

financial year: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Foreign exchange means—

- (a) The bank notes or other currency, postal notes, or money orders of any country other than New Zealand:
- (b) Promissory notes and bills of exchange payable otherwise than in New Zealand currency:
- (c) A right to receive payment in the currency of a country other than New Zealand:
- (d) An obligation to make payment in the currency of a country other than New Zealand:
- (e) A security in respect of which any amount payable is payable in a country other than New Zealand or in a foreign currency:

Governor means the Governor of the Bank appointed under this Act

Holding company means a holding company within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be

Holding company: this definition was inserted, as from 24 March 1995, by section 2 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

home country supervisor means any central bank, authority, or body in any country other than New Zealand that exercises functions in relation to a parent bank or an overseas incorporated registered bank that correspond with, or are similar to, those conferred on the Bank under Part 5

home country supervisor: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

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

home jurisdiction: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Minister means the Treasurer, or other Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or particular provisions of this Act.

Minister: this definition was substituted, as from 25 June 1997, by section 2 Treasurer (Statutory References) Act 1997 (1997 No 20).

net income, in relation to a financial year, means the total revenue of the Bank reported in its statement of financial performance for that year calculated after deducting all expenses incurred by the Bank in that year.

net income: this definition was inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

New Zealand chief executive officer, in relation to an overseas incorporated registered bank, means—

- (a) the most senior officer of that bank who is ordinarily resident in New Zealand; or

- (b) another person who may be nominated by that bank and agreed to in writing by the Bank; or
- (c) if section 82(3) applies, an employee of that bank who has been specified by the Bank under that section

New Zealand chief executive officer: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

non-voting security, in relation to any body, means a specified security that does not confer a voting right

non-voting security: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

operating expenses, in relation to a financial year,—

- (a) includes all expenses incurred by the Bank and reported in its statement of financial performance for that year; but
- (b) does not include—
 - (i) interest, foreign exchange losses, and losses (or provision for losses) on financial instruments or revaluation of financial instruments; or
 - (ii) any payments made to the Crown under section 21.

operating expenses: this definition was inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

operator, in relation to a payment system, means—

- (a) a clearing house; or
- (b) a settlement agent; or
- (c) any other person that provides clearing, settlement, or processing services to participants in that payment system

operator: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

overseas bank means any person that is formed, licensed, or registered as a bank in any country other than New Zealand

overseas bank: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

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 person: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

parent bank means an overseas bank that is a holding company of a registered bank

parent bank: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

participant, in relation to a payment system,—

- (a) means a person that participates in the payment system in accordance with the rules of that payment system; and
- (b) in the case of a designated payment system, includes an operator of the designated payment system if the designation under section 156M so provides

participant: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

payment system—

- (a) means a system or arrangement for—
 - (i) the clearing or settlement of payment obligations; or
 - (ii) the processing of payment instructions; and
- (b) includes any instruments, rules, and procedures that relate to the matters referred to in paragraph (a)

payment system: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

qualifying interest, in relation to a specified security, means—

- (a) the legal or beneficial ownership of the specified security; or
- (b) the power to exercise, or control the exercise of, any voting right attached to the specified security; or
- (c) the power to acquire or dispose of the specified security; or
- (d) the power to control the acquisition or disposition of the specified security by another person; 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 specified security

qualifying interest: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Registered bank means a person whose name is entered in the register maintained under section 69 of this Act or who continues to be a registered bank by virtue of the provisions of section 76 of this Act

Reserve Bank or the Bank means the Reserve Bank of New Zealand constituted under this Act

restricted word—

- (a) means 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)

restricted word: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Security has the same meaning as in section 2 of the Securities Act 1978

significant influence, in relation to a registered bank, means—

- (a) the ability to directly or indirectly appoint 25% or more of the board of directors (or other persons exercising powers of management, however described) of the registered bank; or
- (b) a direct or indirect qualifying interest in 10% or more of the voting securities issued or allotted by the registered bank

significant influence: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

specified security has the meaning given to **security** in section 6(1) of the Overseas Investment Act 2005

specified security: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

specified security: this definition was substituted, as from 25 August 2005, by section 75 Overseas Investment Act (2005 No 82). *See* sections 76 to 79 of that Act as to the transitional provisions. *See* clause 2 Overseas Investment Act Commencement Order 2005 (SR 2005/219).

Subsidiary means a subsidiary within the meaning of section 158(1)(a)(ii) and (b) of the Companies Act 1955 or section 5(1)(a)(iii) and (b) of the Companies Act 1993, as the case may be.

Subsidiary: this definition was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

trade mark has the meaning given to it by section 5(1) of the Trade Marks Act 2002

trade mark: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

voting right, in relation to any body,—

- (a) means a currently exercisable right to cast a vote at meetings of shareholders or members of that body; but
- (b) does not include a right to vote that is exercisable only in 1 or more of the following circumstances:
 - (i) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
 - (ii) on a proposal that affects rights attached to the security that confers the voting right:
 - (iii) on a proposal to put the body into liquidation or voluntary administration:
 - (iv) on a proposal for the disposal of the whole, or a material part, of the property, business, or undertaking of the body:
 - (v) during the liquidation, receivership, voluntary administration, bankruptcy, or statutory management of the body; and
- (c) does not include a right to vote that is exercisable only for a special, immaterial, or remote matter that is inconsequential to the control of the body

voting security, in relation to any body, means a specified security that confers a voting right.

voting security: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

- (2) For the purposes of section 36, Parts 4 and 5, and sections 179 and 179A, a person is an associated person of a financial institution or a registered bank, as the case may be, if—
- (a) that person directly or indirectly controls the management of the financial institution or registered bank; or
 - (b) that person has a direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by the financial institution or registered bank; or
 - (c) that financial institution or registered bank directly or indirectly controls the management of that person; or
 - (d) that financial institution or registered bank has a direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by that person.
- (3) For the purposes of section 77A, transaction includes the—
- (a) sale or transfer of property or securities; and
 - (b) issue or allotment of securities; and
 - (c) entering into, or giving effect to a provision in, a contract or arrangement; and
 - (d) arriving at, or giving effect to, an understanding.
- (4) For the purposes of Part 5, a holding company of a registered bank has a substantial interest in a body if—
- (a) that holding company directly or indirectly controls the management of that body; or
 - (b) that holding company has a direct or indirect qualifying interest in 20% or more of the voting securities issued by that body.

Compare: 1964 No 134 s 2; 1986 No 131 s 2

Section 2(1) **voting right** paragraph (b)(iii): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Section 2(1) **voting right** paragraph (b)(v): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

voting right: this definition was inserted, as from 21 August 2003, by section 3(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (2) was substituted, as from 21 August 2003, by section 3(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsections (3) and (4) were inserted, as from 21 August 2003, by section 3(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

3 Interpretation of provisions relating to false or misleading information

For the purposes of this Act, a reference to information or data that is false or misleading includes a reference to information or data that is false or misleading by reason of—

- (a) The form or context in which it is published or supplied;
or
- (b) The omission of any other information that is material in the form and context in which it is published or supplied.

4 Act to bind the Crown

This Act shall bind the Crown.

**Part 1
Constitution of Reserve Bank of New
Zealand**

5 Reserve Bank of New Zealand

- (1) There shall continue to be a bank called the Reserve Bank of New Zealand.
- (2) The Bank shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding and disposing of real and personal property and of suing and being sued.
- (3) Without limiting any other provision of this Act, the Bank shall have the rights, powers, and privileges of a natural person.
- (4) The Bank is the same body corporate as that which was continued in existence by the Reserve Bank of New Zealand Act 1964.

Compare: 1964 No 134 s 3(1), (2)

6 Branches and agencies

The Bank may establish branches and agencies and appoint agents in New Zealand or elsewhere.

Compare: 1964 No 134 s 3(3)

Part 2**Functions and powers of Reserve Bank***Central bank***7 Bank to act as central bank**

The Bank shall act as the central bank for New Zealand.

Compare: 1964 No 134 s 8(1)(a); 1973 No 16 s 5

*Monetary policy***8 Primary function of Bank**

The primary function of the Bank is to formulate and implement monetary policy directed to the economic objective of achieving and maintaining stability in the general level of prices.

9 Policy targets

- (1) The Minister shall, before appointing, or reappointing, any person as Governor, fix, in agreement with that person, policy targets for the carrying out by the Bank of its primary function during that person's term of office, or next term of office, as Governor.
- (2) In the case of a person who is deemed to have been appointed as Governor under section 191(1) of this Act, policy targets for that person's term of office shall be fixed by the Minister, in agreement with the Governor, within 30 days after the commencement of this Act.
- (3) Policy targets may be fixed for the term of office of the Governor, or for specified periods during the term of office of the Governor, or for both.
- (4) The Minister and the Governor may, from time to time,—
 - (a) Review or alter any policy targets fixed under this section; or

- (b) Substitute new policy targets for targets fixed under this section.
- (5) Where policy targets are fixed under this section,—
 - (a) The Minister shall ensure that they are recorded in writing; and
 - (b) The Governor shall ensure that they are tabled at the first Board meeting held after the date on which they are fixed; and
 - (c) The Minister shall, as soon as practicable after they are fixed, publish them in the *Gazette* and lay a copy of them before the House of Representatives.

10 Formulation and implementation of monetary policy

In formulating and implementing monetary policy the Bank shall—

- (a) Have regard to the efficiency and soundness of the financial system:
- (b) Consult with, and give advice to, the Government and such persons or organisations as the Bank considers can assist it to achieve and maintain the economic objective of monetary policy.

11 Governor to ensure policy targets followed

It is the duty of the Governor to ensure that the actions of the Bank in implementing monetary policy are consistent with the policy targets fixed under section 9 of this Act.

12 Bank may be directed to formulate and implement monetary policy for different economic objective

- (1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister, direct the Bank to formulate and implement monetary policy for any economic objective, other than the economic objective specified in section 8 of this Act, for such period not exceeding 12 months as shall be specified in the order.
- (2) Notwithstanding anything in section 8 of this Act, the Bank shall formulate and implement monetary policy in accordance with any economic objective specified in an Order in Council in force under subsection (1) of this section.

- (3) The Governor-General may, by Order in Council, on the advice of the Minister, before the period specified in an Order in Council made under subsection (1) of this section expires, extend the period specified in that order for a period, which shall be specified in the order, not exceeding 12 months, and may in the same manner extend that period on successive occasions.
- (4) Every Order in Council made under subsection (1) of this section shall expire with the close of the last day of the period specified in the order or any extension of that period.
- (5) An Order in Council made under subsection (1) of this section may be revoked.
- (6) The Minister shall, as soon as practicable after the making of an Order in Council under this section, publish a copy of the order in the *Gazette* and lay a copy of the order before the House of Representatives.
- (7) While an Order in Council made under subsection (1) of this section remains in force,—
 - (a) The policy targets fixed under section 9 of this Act shall cease to have effect; and
 - (b) The Minister and the Governor shall,—
 - (i) Within 30 days of the making of the order, or the making of an Order in Council under subsection (3) of this section, as the case may be, fix new policy targets for the period that the order remains in force; and
 - (ii) Within 30 days of the expiry or revocation of the order, fix new policy targets for the carrying out by the Bank of its primary function.
- (8) Subsections (4) and (5) of section 9 of this Act shall apply in relation to any policy targets fixed under subsection (7)(b) of this section.

13 Bank's primary function not affected

Except as provided in sections 9 to 12 of this Act, nothing in this Act or in any other Act whether passed before or after the commencement of this Act limits or affects the obligation of the Bank to carry out its primary function.

14 Advice concerning effects of monetary policy

Where the Bank gives advice to the Minister under any provision of this Act and the Governor considers that giving effect to that advice would, or would be likely to, affect the monetary policy of the Bank, the Governor shall advise the Minister of—

- (a) The effect, or likely effects, on monetary policy; and
- (b) Any action that may be taken by the Bank in implementing the Bank's monetary policy if effect is given to that advice.

15 Policy statements

- (1) The Bank shall deliver to the Minister and publish, in accordance with subsection (1A) of this section, policy statements for the period of 6 months from and after the date of publication.
- (1A) The Bank shall deliver and publish a policy statement on or before the 1st day of October 1990 and thereafter at intervals not exceeding 6 months from the date of publication of each preceding statement.
- (1B) The Bank shall, if directed to do so by the Minister, in addition to its obligation under subsection (1) of this section, deliver to the Minister and publish policy statements at such intervals and for such periods as may be specified in the direction.
- (2) The policy statement shall be signed by the Governor and shall—
 - (a) Specify the policies and means by which the Bank intends to achieve the policy targets fixed under section 9 of this Act:
 - (b) State the reasons for adopting those policies and means:
 - (c) Contain a statement of how the Bank proposes monetary policy might be formulated and implemented during the next 5 years:
 - (d) Contain a review and assessment of the implementation by the Bank of monetary policy during the period to which the preceding policy statement relates.
- (3) Every policy statement stands referred, by virtue of this section, to the House of Representatives.

Subsection (1) was substituted, as from 8 August 1990, and subsections (1A) and (1B) were inserted, as from 8 August 1990, by section 2 Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96).

Subsection (3) was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

Foreign exchange

16 Dealing in foreign exchange by Bank

For the purposes of performing its functions and fulfilling its obligations under this Act or any other Act, the Bank may, from time to time, deal in foreign exchange with such persons, including the Crown, and on such terms and conditions as the Bank thinks fit.

17 Power of Minister to direct Bank to deal in foreign exchange within guidelines

- (1) The Minister may, for the purpose of influencing the exchange rate or exchange rate trends, from time to time, by notice in writing to the Bank, direct the Bank to deal in foreign exchange within guidelines prescribed by the Minister in the notice.
- (2) Notwithstanding section 16 of this Act, while the direction remains in force all foreign exchange dealing by the Bank shall comply with the direction.
- (3) The Minister may, from time to time, by notice in writing to the Bank, vary or revoke any direction given under subsection (1) of this section.

18 Power of Minister to fix exchange rates for foreign exchange dealing by Bank

- (1) Subject to this section, the Minister may from time to time, by notice in writing to the Bank,—
 - (a) Direct that all foreign exchange dealing by the Bank shall be at rates of exchange, or within a range of rates of exchange, specified by the Minister in the direction:
 - (b) Direct the Bank to deal in foreign exchange at those rates or within that range of rates with such persons or class or classes of persons as may be specified by the Minister in the direction.

- (2) Notwithstanding sections 16 and 17 of this Act, the Bank shall, on receiving a direction under this section,—
 - (a) Conduct its foreign exchange dealing at the rates, or within the range of rates, specified:
 - (b) Deal in foreign exchange at those rates, or within that range of rates, with such of the persons or class or classes of persons specified in the direction as may require the Bank to do so.
- (3) The Minister may from time to time, by notice in writing to the Bank, vary or revoke any direction given under subsection (1) of this section.
- (4) The Minister shall not give a direction under subsection (1) of this section unless the Minister has been authorised to do so by the Governor- General by Order in Council within 30 days before the direction is given and a separate authorisation shall be required for each separate occasion on which a direction is given.
- (5) The Minister shall give notice in the *Gazette* of the fact that a direction has been given and that a direction has been revoked.

19 Effect of directions on policy targets

- (1) If the Governor considers that the giving effect to by the Bank of a direction under either section 17 or section 18 of this Act would, while not being inconsistent with the economic objective of monetary policy, be inconsistent with achieving the policy targets fixed under section 9 of this Act, the Governor may, by notice in writing to the Minister, advise the Minister that the Bank will, in giving effect to the direction, be unable to achieve those policy targets and request new policy targets to be fixed.
- (2) Where a notice is given under this section—
 - (a) The Bank is not required to achieve the existing policy targets:
 - (b) The Minister and the Governor shall, within 1 month after the notice is given, substitute new policy targets in accordance with section 9(4)(b) of this Act and, in that event, the provisions of section 9(5) of this Act shall apply to those policy targets.

20 Effect of directions on monetary policy

- (1) If the Governor considers that the giving effect to by the Bank of a direction under either section 17 or section 18 of this Act would be inconsistent with the economic objective of monetary policy the Governor may, by notice in writing, advise the Minister that the Bank does not propose to give effect to the direction.
- (2) Where a notice is given under this section the Bank shall not, unless an Order in Council is made under section 12 of this Act that requires the Bank to formulate and implement monetary policy in accordance with an economic objective that is consistent with the direction, be required to comply with that direction.

21 Foreign exchange gains and losses

- (1) The Bank shall pay into the Crown Bank Account any exchange gains (whether realised or unrealised) made by the Bank as a result of dealing in foreign exchange under sections 17 and 18 of this Act.
- (2) The Minister shall, without further appropriation, pay to the Bank out of the Crown Bank Account the amount of any exchange losses (whether realised or unrealised) incurred by the Bank as a result of dealing in foreign exchange under sections 17 and 18 of this Act.

22 Temporary suspension of foreign exchange business

- (1) The Governor may, if the Governor is satisfied that it is necessary to avoid disorder in the foreign exchange market, from time to time, by notice in writing to all registered banks, direct that, subject to any exceptions specified in the notice, no registered bank shall, except with permission granted by the Bank, deal until further notice in any foreign exchange or foreign exchange of such kinds as are specified in the notice.
- (2) The Governor shall, as soon as practicable, give notice in writing to the Minister of the exercise of the power conferred under subsection (1) of this section.
- (3) Every notice under subsection (1) of this section shall remain in force until it is revoked—

- (a) By Order in Council; or
 - (b) By notice in writing given by the Governor to all registered banks.
- (4) An obligation on a person to do a thing on a day on which that person is prevented from doing it by a notice under this section, or is unable to do it by reason of any such notice, shall be deemed to be complied with if that person does it as soon as practicable after the notice is revoked.
- (5) Where any transaction to which a notice issued under this section applies is subject to the Bills of Exchange Act 1908 or the Banking Act 1982, then, in relation to that transaction, every day on which the notice remains in force shall be deemed to be a non-business day for the purposes of the Bills of Exchange Act 1908.

Compare: 1964 No 134 s 26A; 1986 No 131 s 8

23 Bank to advise Minister on foreign exchange matters

The Bank shall, from time to time, advise the Minister on—

- (a) Foreign exchange rate systems:
- (b) The management of foreign reserves:
- (c) The operation of the foreign exchange market:
- (d) Any other matters relating to foreign exchange.

24 Foreign reserves

- (1) The Minister shall, from time to time, in consultation with the Bank, determine the level at which, or the levels within which, foreign reserves shall be maintained for the purpose of enabling the Bank to exercise the powers conferred by this Act.
- (2) The Bank shall hold and maintain foreign reserves at that level or within those levels and, for that purpose, but without limiting the powers of the Bank under this Act, may—
 - (a) Acquire and deal in foreign currency:
 - (b) Deal in foreign currency on behalf of the Crown:
 - (c) Appoint any person to acquire and deal in foreign currency on behalf of the Crown or the Bank.

*Currency***25 Issue of currency by Bank**

- (1) The Bank shall have the sole right to issue bank notes and coins in New Zealand.
- (2) The Bank shall determine the denominations, form, design, content, weight, and composition of its bank notes and coins.
- (3) Every bank note issued by the Bank before the commencement of this Act, and every coin issued by the Minister under the Decimal Currency Act 1964 or under the Coinage Act 1933 by virtue of the Decimal Currency Act 1964, which is legal tender at the commencement of this Act shall be deemed for all purposes to have been made or issued under this Act.

Compare: 1964 No 134 s 20(1), (3); 1964 No 27 s 10

26 Power of Bank to call in currency

- (1) The Bank may, from time to time, with the prior consent of the Minister, by notice in the *Gazette*, call in any bank notes or coins issued or deemed to have been issued under this Act.
- (2) Every notice shall take effect on a date specified in it.
- (3) When the notice takes effect, all bank notes or coins to which it applies shall cease to be legal tender; but the Bank shall continue to be liable to pay any such bank note or coin on presentation at the head office of the Bank.
- (4) The Bank shall continue to be liable to pay any bank note issued before the commencement of this Act which has ceased to be legal tender before the commencement of this Act and which the Bank was, immediately before the commencement of this Act, liable to pay, on presentation at the head office of the Bank.
- (5) The Bank shall be liable to pay any coin issued by the Minister before the commencement of this Act which has ceased to be legal tender before the commencement of this Act, on presentation at the head office of the Bank.

Compare: 1964 No 134 s 22; 1964 No 27 s 12

27 Legal tender

- (1) Every bank note issued, or deemed to be issued, under this Act shall be a legal tender for the amount expressed in the note.

- (2) A tender of payment of money, to the extent that it is made in coins issued, or deemed to be issued, under this Act, shall be a legal tender,—
- (a) In the case of coins of a denomination of \$10 or more, for the payment of any amount:
 - (b) In the case of coins of a denomination of \$1 or more but less than \$10, for the payment of any amount not exceeding \$100:
 - (c) In the case of coins of the denomination of 5 cents or more, but less than \$1, for the payment of an amount not exceeding \$5:
 - (d) In the case of any coins of the denomination of less than 5 cents, for the payment of an amount not exceeding 20 cents.
- (3) The references to coins and bank notes in subsections (1) and (2) of this section do not include references to coins and bank notes that have been called in.

Compare: 1964 No 134 s 20(2); 1964 No 27 s 14

28 Defacing bank notes

- (1) No person shall, without the prior consent of the Bank, wilfully deface, disfigure, or mutilate any bank note.
- (2) No person who is a party to the defacement, disfigurement, or mutilation of any bank note, shall—
- (a) Pay away; or
 - (b) Part with; or
 - (c) Put in circulation; or
 - (d) Demand payment of; or
 - (e) Deposit or offer to deposit in any bank,—
- that bank note.
- (3) Every person who contravenes subsection (1) or subsection (2) of this section commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000.

Compare: 1964 No 134 s 23

29 Making or issuing of other bank notes or coins

- (1) No person shall make or issue any bank note or coin, other than a bank note or coin issued under this Act.

- (2) Every person who contravenes subsection (1) of this section commits an offence against this Act and shall be liable on conviction on indictment,—
- (a) In the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000;
 - (b) In the case of a body corporate, to a fine not exceeding \$300,000.

30 Reproduction or imitation of currency

- (1) No person shall, without the prior consent of the Bank,—
- (a) Make, design, engrave, print, or reproduce; or
 - (b) Use, issue, or publish—
- any article or thing resembling a bank note or coin or so nearly resembling or having such a likeness to a bank note or coin as to be likely to be confused with or mistaken for it.
- (2) Every person who contravenes subsection (1) of this section commits an offence against this Act.
- (3) Where a person is convicted of an offence against subsection (2) of this section, the Court may order—
- (a) The article or thing;
 - (b) Any copy of it;
 - (c) Any plates, blocks, dies, and other instruments used or capable of being used for printing or reproducing it—
- in the possession of that person to be destroyed.

Compare: 1964 No 134 s 24(2); 1973 No 16 s 6

Other functions and powers

31 Bank to act as lender of last resort

The Bank shall, if the Bank considers it necessary for the purpose of maintaining the soundness of the financial system, act as lender of last resort for the financial system.

32 Bank may provide settlement account services

The Bank may provide settlement account services for financial institutions on such terms and conditions as may be determined by agreement.

33 Financial sector policy advice

The Bank shall, from time to time, advise the Minister on matters relating to the operation of the financial system.

34 Government banking business

- (1) Subject to the Public Finance Act 1989, the Bank may, in accordance with an agreement with the Minister, undertake all or part of the banking business of the Government.
- (2) Any such agreement may provide for the Bank to charge for the provision of banking services.

Compare: 1964 No 134 s 12

35 Securities registry services

- (1) The Bank may provide securities registry services for any person including services in connection with—
 - (a) The issue, registration, exchange, transfer, or replacement of securities;
 - (b) The calling and acceptance of tenders for securities;
 - (c) The making or receiving of payment in respect of any security.
- (2) Securities registry services may be provided for such remuneration, and on such terms and conditions, as may be agreed by the Bank and the person for whom they are provided.

36 Bank may require financial institution to supply information

- (1) For the purposes of enabling the Bank to carry out the functions and exercise the powers conferred on it by this Part of this Act, the Bank may, from time to time, by notice in writing to any financial institution, or by notice in the *Gazette* applying to any specified class of financial institutions, require the institution or, as the case may be, institutions of that class, to supply to the Bank such information and data relating to the business of the institution or institutions of that class for such periods, and in such form, as may be specified in the notice.
- (2) Without limiting subsection (1) of this section, a notice may require information and data to be supplied relating to the assets and liabilities, income and expenditure (including interest

rates charged and payable), fees and charges, obligations and commitments, and risk exposures of, and classes of transactions entered into by, that institution or class of institutions and any associated person and, where specified, in consolidated form, in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent, or intermediary.

- (3) A notice given pursuant to this section may, by a subsequent notice, be revoked, varied, or amended by the Bank.
- (4) Information and data required to be supplied pursuant to this section shall be supplied to the Bank at such place in New Zealand and at such time as are specified in the notice.
- (5) A financial institution shall not be required to supply data or information under this section relating to the affairs of a particular customer or client.

Compare: 1964 No 134 s 38H(1), (2), (4)–(6); 1986 No 131 s 10

37 Failure to supply information

Every financial institution commits an offence against this Act if, without lawful justification or excuse, it—

- (a) Fails to comply in any respect with any of the provisions of section 36 of this Act or of any requirements of the Bank under that section; or
- (b) Supplies any information or data which it is required to supply under section 36 of this Act which is false or misleading in any material particular.

Compare: 1964 No 134 s 38H(7); 1986 No 131 s 10

38 Requirement that information be audited

- (1) Where the Bank believes that any information or data supplied by a financial institution pursuant to section 36 of this Act is, or may be, inadequate or inaccurate, it may, by notice in writing to that financial institution, require that information or data to be audited by an auditor approved by the Bank.
- (2) Every financial institution commits an offence against this Act if, without lawful justification or excuse, it fails to comply with a requirement under subsection (1) of this section.

Compare: 1964 No 134 s 38H(3); 1986 No 131 s 10

39 Powers

Without limiting section 5 or any other provision of this Act, the Bank has power, whether in New Zealand or elsewhere, to—

- (a) Carry on the business of banking:
- (b) Issue securities:
- (c) Give a fixed or floating charge over all or any part of the undertaking or property of the Bank:
- (d) If the Bank ceases to carry out any function, make provision, whether or not it is in the Bank's interest to do so, for the benefit of employees of the Bank, or former employees, or their dependants:
- (e) Enter into agreements or arrangements and obtain assurances necessary or desirable for carrying out its functions and exercising its powers:
- (f) Carry on any business or exercise any powers, not inconsistent with any other function of the Bank, which can be conveniently carried on, or exercised in conjunction with its functions and the exercise of its powers.

Part 3

Management of Reserve Bank

Governor and Deputy Governor

40 Governor

- (1) There shall be a Governor of the Bank who shall be appointed by the Minister on the recommendation of the Board.
- (2) The Governor shall be the Chief Executive of the Bank.

41 Duties of Governor

- (1) It is the duty of the Governor to ensure that the Bank carries out the functions imposed on it by this Act.
- (2) The Governor has the authority, in the performance of those functions, to act in relation to all matters that are not by this Act required to be dealt with by the Board.

42 Conditions of employment of Governor

- (1) The Governor shall be appointed for a term of 5 years and may be reappointed for a further term or terms, each of up to 5 years.
- (2) The conditions of employment of the Governor, including remuneration, shall be—
 - (a) Determined by agreement between the Minister and the Governor after consultation with the Board; and
 - (b) Tabled at the first Board meeting after they are agreed.
- (3) No condition of the agreement shall have effect if it is inconsistent with the Bank's functions or limits or prevents the Governor from ensuring that those functions are carried out.

43 Deputy Governor

- (1) There shall be either 1 Deputy Governor or 2 Deputy Governors of the Bank who shall be appointed by the Board on the recommendation of the Governor.
- (2) If 2 Deputy Governors are appointed, the Board shall, on the recommendation of the Governor, designate 1 of them as the Deputy Chief Executive of the Bank.
- (3) Subject to this Act, the Deputy Governor or Deputy Governors, as the case may be, shall perform such duties and functions as are determined by the Governor.

44 Conditions of employment of Deputy Governor

- (1) The Deputy Governor or Deputy Governors, as the case may be, shall be appointed for a term of 5 years and may be reappointed for a further term or terms, each of up to 5 years.
- (2) The conditions of employment, including remuneration, of the Deputy Governor or Deputy Governors, shall be determined by the Board and shall specify the grounds on which the Governor may recommend that the Deputy Governor may be removed from office by the Board.

45 Removal of Deputy Governor from office

- (1) The Board may, on the recommendation of the Governor, remove any Deputy Governor from office.

- (2) A recommendation under subsection (1) of this section may be made only on the grounds specified for that purpose in the conditions of employment of the Deputy Governor to whom the recommendation relates.

46 Disqualification of Governor and Deputy Governor

- (1) No person shall be appointed or reappointed, or continue to hold office, as Governor, Deputy Governor, or a Deputy Governor, if that person—
- (a) Is a member of Parliament; or
 - (b) Is an employee of a registered bank; or
 - (c) Is 70 years of age or over; or
 - (d) Is a chief executive of a Government department or an employee of a Government department, appointed under the State Sector Act 1988; or
 - (e) Is a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
 - (f) Is a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
 - (g) Is a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
 - (h) Is a person who would, but for the repeal of section 188 or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or in any way whether directly or indirectly taking part in the management of, a company within the meaning of that Act:
 - (i)
 - (j) is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993; or
 - (k) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

- (2) The Governor, the Deputy Governor, or a Deputy Governor, as the case may be, shall be deemed to have resigned office if that person is prohibited from continuing to hold office under this section.

Subsection (1)(d) was amended, as from 25 January 2005, by section 19(1) State Sector Amendment Act (No 2) 2004 (2004 No 114) by omitting the words “, or a member of the senior executive service,”.

Subsection (1)(h), (i) and (j) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (1)(i) was repealed, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Subsection (1)(j) was substituted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

47 Incapacity of Governor and Deputy Chief Executive

- (1) In the case of the absence or incapacity of the Governor, the Deputy Chief Executive shall have all the duties, responsibilities, and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.
- (2) In the case of the absence or incapacity of the Governor and the Deputy Chief Executive, the Minister shall, on the recommendation of the Board, appoint—
- (a) A director of the Bank; or
 - (b) An officer of the Bank—
- to act as Governor.
- (3) If the Minister is unable to make an appointment under subsection (2) of this section by reason of the fact that, in the circumstances, it is impracticable for a meeting of the Board to be held, the Minister shall appoint—
- (a) A director of the Bank; or
 - (b) An officer of the Bank—
- to act as Governor for a period not exceeding 28 days.
- (4) The person appointed to act as Governor shall, so long as the appointment continues, have all the duties, responsibilities, and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.
- (5) While any of the following persons is acting as Governor in accordance with this section, he or she must be taken to be a director of the Bank:
- (a) the Deputy Chief Executive:

- (b) a person appointed to act as Governor, but who is not a director of the Bank.

Compare: 1964 No 134 s 18(2), (6), (7)

Subsection (5) was substituted, as from 21 August 2003, by section 4 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

48 Vacancy in office of Governor

- (1) If the office of Governor becomes vacant, the Minister shall, on the recommendation of the Board, appoint—
 - (a) A director of the Bank; or
 - (b) An officer of the Bank; or
 - (c) Any other person—to act as Governor for a period not exceeding 6 months or for the remainder of the Governor's term, whichever is less.
- (2) Pending the appointment of a person to act as Governor under subsection (1) of this section, the Deputy Chief Executive shall act as Governor for a period of 28 days or until a person is appointed under that subsection, whichever is less.
- (3) The person appointed to act as Governor or the Deputy Chief Executive, as the case may be, shall, so long as that person acts as Governor, have all the duties, responsibilities and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.
- (4) A person who is appointed to act as Governor under this section, but who is not a director of the Bank, shall, while acting as Governor, be deemed to be a director of the Bank.

49 Removal of Governor from office

- (1) The Governor-General may, by Order in Council, on the advice of the Minister, remove the Governor from office.
- (2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied—
 - (a) That the Bank is not adequately carrying out its functions; or
 - (b) That the Governor has not adequately discharged the responsibilities of office; or

- (c) That the Governor has obstructed, hindered, or prevented the Board from discharging its responsibilities under this Act; or
 - (d) That the performance of the Governor in ensuring that the Bank achieves the policy targets fixed under section 9 or section 12(7)(b) of this Act has been inadequate; or
 - (e) That, in a case where section 9(2) or subparagraph (i) or subparagraph (ii) of section 12(7)(b) of this Act applies, the Minister and the Governor have not been able, within the time prescribed, to agree on new policy targets; or
 - (f) That a policy statement made pursuant to section 15 of this Act is inconsistent in a material respect with the Bank's primary function or any policy target fixed under section 9 or section 12(7)(b) of this Act; or
 - (g) That the resources of the Bank have not been properly or effectively managed; or
 - (h) That the Governor, except as provided in his or her conditions of employment, has, while holding office as Governor,—
 - (i) Held any other office of profit; or
 - (ii) Engaged in any other occupation for reward; or
 - (iii) Had an interest in a registered bank; or
 - (iv) Had an interest in a bank carrying on business outside New Zealand; or
 - (i) That the Governor is unable to carry out the responsibilities of office, or has been guilty of serious neglect of duty or misconduct.
- (3) The Minister may tender advice under this section whether or not the Board has made a recommendation under section 53(3) of this Act that the Governor be removed from office.

50 Removal of Deputy Governor from office by Order in Council

- (1) The Governor-General may, by Order in Council, on the advice of the Minister, remove the Deputy Governor or a Deputy Governor from office.
- (2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied that the Deputy Governor—

- (a)
 - (b) Has been guilty of misconduct; or
 - (c) Has obstructed, hindered, or prevented the Governor from discharging the responsibilities of the Governor under this Act; or
 - (d) Except as provided in his or her conditions of employment, has, while holding office as Deputy Governor,—
 - (i) Held any other office of profit; or
 - (ii) Engaged in any other occupation for reward; or
 - (iii) Had an interest in a registered bank; or
 - (iv) Had an interest in a bank carrying on business outside New Zealand.
- (3) If a person who holds office as the Deputy Governor or as a Deputy Governor is removed from office under this section, that person shall, unless that person's conditions of employment provide for that person to cease to be employed as an officer of the Bank in the event of removal from office of Deputy Governor under this section, continue to be employed by the Bank.

Subsection (2)(a) was repealed, as from 21 August 2003, by section 5 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* section 49 of that Act as to Deputy Governors ceasing to be directors of the Bank. *See* sections 49 to 52 of that Act as to the transitional provisions.

51 Delegation

- (1) The Governor may, at any time, delegate to the Deputy Chief Executive any of the Governor's functions and powers including the power of delegation under subsection (2) of this section.
- (2) The Governor may, at any time, delegate any of the Governor's functions and powers—
 - (a) If there is more than 1 Deputy Governor of the Bank, to the Deputy Governor who is not the Deputy Chief Executive;
 - (b) To any officer of the Bank.
- (3) The fact that the Deputy Chief Executive exercises any powers or functions of the Governor shall be conclusive proof of the authority to do so, and no person shall be concerned to inquire whether the occasion for doing so has arisen or has ceased.

- (4) A Deputy Governor who is not the Deputy Chief Executive and any officer of the Bank who purports to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (5) Subject to any general or special directions given or conditions attached by the Governor, any person to whom any powers or functions are delegated under this section may exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (6) A delegation under this section may be revoked at any time.
- (7) A delegation of any power or function under this section shall not prevent the exercise of the power or function by the Governor.
- (8) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Governor who made it may have ceased to hold office.

Compare: 1964 No 134 s 18(3), (4)

Board of directors

52 Board of directors

There shall be a board of directors of the Bank.

53 Duties of Board

- (1) Subject to this Act, the Board of the Bank shall—
 - (a) Keep under constant review the performance of the Bank in carrying out its functions:
 - (b) Keep under constant review the performance of the Governor in discharging the responsibilities of that office:
 - (c) Keep under constant review the performance of the Governor in ensuring that the Bank achieves the policy targets agreed to with the Minister under section 9 or section 12(7)(b) of this Act:
 - (d) Determine whether policy statements made pursuant to section 15 of this Act are consistent with the Bank's primary function and the policy targets agreed to with

the Minister under section 9 or section 12(7)(b) of this Act:

- (e) Keep under constant review the use of the Bank's resources.
- (2) The Board may give advice to the Governor on any matter relating to the performance of the Bank's functions and the exercise of its powers.
- (3) If the Board is satisfied—
 - (a) That the Bank is not adequately carrying out its functions; or
 - (b) That the Governor has not adequately discharged the responsibilities of that office; or
 - (c) That the performance of the Governor in ensuring that the Bank achieves the policy targets fixed under section 9 or section 12(7)(b) of this Act has been inadequate; or
 - (d) That a policy statement made pursuant to section 15 of this Act is inconsistent in a material respect with the Bank's primary function or any policy target fixed under section 9 or section 12(7)(b) of this Act; or
 - (e) That the resources of the Bank have not been properly or effectively managed; or
 - (f) That the Governor, except as provided in his or her conditions of employment has, while holding office as Governor,—
 - (i) Held any other office of profit; or
 - (ii) Engaged in any other occupation for reward; or
 - (iii) Had an interest in a registered bank; or
 - (iv) Had an interest in a bank carrying on business outside New Zealand; or
 - (g) That the Governor is unable to carry out the responsibilities of office, or has been guilty of serious neglect of duty, or has been guilty of misconduct,—the Board shall advise the Minister in writing and may recommend to the Minister that the Governor be removed from office.

53A Board must prepare annual report

- (1) The Board must prepare, for each financial year, a report setting out the Board's assessment of the matters referred to in section 53(1).
- (2) The report must—
 - (a) be signed by the chairperson and 1 other non-executive director; and
 - (b) be delivered to the Minister within 3 months after the end of the financial year.
- (3) The report stands referred, by virtue of this section, to the House of Representatives.

Section 53A was inserted, as from 21 August 2003, by section 6 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

54 Membership of Board

- (1) The Board must consist of—
 - (a) not less than 5, and not more than 7, non-executive directors appointed by the Minister; and
 - (b) the Governor.
- (2) The appointment of every non-executive director must be notified in the *Gazette*.
- (3) The Governor is the only person employed in the service of the Bank who may be a director of the Bank.
- (4) The validity of any act of the Board is not affected by—
 - (a) any vacancy in its membership; or
 - (b) any defect in the appointment of a director; or
 - (c) the fact that any non-executive director is disqualified from appointment under section 58.
- (5) Subsection (3) is subject to sections 47 and 48.

Section 54 was substituted, as from 21 August 2003, by section 7 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

55 Term of office of non-executive directors

- (1) Except as provided in subsection (2) of this section and in sections 57 to 59 of this Act, every non-executive director shall hold office for a term of 5 years.
- (2) The first non-executive directors of the Bank appointed under this Act shall be appointed for terms, not exceeding 5 years, which ensure that not more than 2 of those directors retire in the same year.
- (3) A non-executive director may from time to time be reappointed.
- (4) A non-executive director may at any time resign office by notice in writing to the Minister.

56 Considerations affecting appointment of non-executive directors

In considering the appointment or reappointment of a person to the office of non-executive director of the Bank, the Minister shall have regard, in relation to that office, to—

- (a) That person's knowledge, skill, and experience; and
- (b) The likelihood of any conflict between the interests of the Bank and any interests which that person has or represents.

57 Extraordinary vacancies

- (1) If a non-executive director dies, or resigns or is removed from office, that office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.
- (2) A non-executive director shall be deemed to have resigned office if that director—
 - (a) Is prohibited by section 58 of this Act from holding office as a director; or
 - (b) Fails, without the Board's consent, to attend 3 consecutive meetings of the Board.
- (3) The manner of filling an extraordinary vacancy shall be the manner prescribed by section 54 of this Act.
- (4) A person who is appointed to fill an extraordinary vacancy shall be appointed for the residue of the term of the vacating director.

58 Disqualification of non-executive directors

No person shall be appointed, or reappointed, to the office of non-executive director of the Bank, or hold that office, if that person—

- (a) Is a member of Parliament; or
- (b) Is an employee of a registered bank; or
- (c) Is a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (d) Is a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (e) Is a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (f) Is a person who would, but for the repeal of section 188 or section 189 or section 189A of the Companies Act 1955, be prohibited from being a director or promoter of, or in any way whether directly or indirectly taking part in the management of, a company within the meaning of that Act:
- (g)
- (h) is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:
- (i) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

Compare: 1964 No 134 s 5; 1986 No 131 s 5

Paragraphs (f) to (h) were substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Paragraph (g) was repealed, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

Paragraph (h) was substituted, as from 25 October 2006, by section 25 Securities Amendment Act 2006 (2006 No 46).

59 Removal from office of non-executive directors

- (1) The Governor-General may, by Order in Council, on the advice of the Minister, remove a non-executive director of the Bank from office.
- (2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied that the director—
 - (a) Is unable, or has failed, to perform the duties of a director of the Bank under this Act; or
 - (b) Has been guilty of misconduct; or
 - (c) Has obstructed, hindered, or prevented the Governor from discharging the responsibilities of the Governor under this Act.

59A Chairperson of Board

- (1) The non-executive directors of the Bank must appoint 1 of their number, by majority vote, to be chairperson of the Board.
- (2) A chairperson holds that office for a term of 12 months unless he or she—
 - (a) resigns from that office; or
 - (b) is removed from that office, at any time, by a majority vote of the non-executive directors; or
 - (c) ceases to be a non-executive director.
- (3) A chairperson whose term of office has expired—
 - (a) is eligible for reappointment so long as he or she continues to be a non-executive director; and
 - (b) continues to hold that office until a successor is appointed.
- (4) A vacancy in the office of chairperson must be filled as soon as practicable in the manner set out in subsection (1).

Section 59A was inserted, as from 21 August 2003, by section 8 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

60 Meetings of Board

- (1) The Board may meet as often as necessary, but must meet at least 6 times each financial year.
- (2) The chairperson, or any 2 directors, may, at any time, call a meeting of the Board.

- (3) At any meeting of the Board, the quorum necessary for the transaction of business is 4 directors.
- (4) All questions arising at any meeting of the Board that cannot be resolved by consensus must be decided by a majority of the votes cast by the directors present.
- (5) If a vote is tied, the chairperson or, if the chairperson is not present, the director presiding at the meeting has a casting vote.
- (6) Subject to this Act, the Board may regulate its own procedure.

Section 60 was substituted, as from 21 August 2003, by section 9 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

60A Teleconference meeting

A resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted if—

- (a) a telephone or video conference of at least 4 directors is held; and
- (b) notice of the conference has been given under section 60B and all reasonable efforts have been made to enable every director to participate in the conference; and
- (c) each director who participates in the conference is able to individually express his or her views, and vote, on any question arising during the meeting; and
- (d) the resolution is assented to by a majority of the directors participating in the conference.

Sections 60A to 60C were inserted, as from 21 August 2003, by section 9 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

60B Directors to be notified of meetings

- (1) The person or persons calling a meeting must ensure that each director is given—
 - (a) at least 2 days' notice of a meeting; or
 - (b) if a meeting is to be convened as a matter of urgency, reasonable notice of the meeting.
- (2) The notice must—
 - (a) indicate the business to be transacted at the meeting; and
 - (b) be given in writing or, if the director to whom the notice is to be given agrees, orally.

- (3) A notice in writing may be given by personal delivery, by post, or by electronic transmission (for example, by fax or email).
- (4) At a meeting of the Board, any director may, with the leave of the chairperson or the majority of the directors present, raise any matter for the consideration of the Board, even though that matter has not been included in the notice of meeting under subsection (2)(a).
- (5) For the purposes of subsection (1), it is enough if the person or persons calling a meeting made all reasonable efforts to ensure each director was given the notice by the time required under that subsection.

Sections 60A to 60C were inserted, as from 21 August 2003, by section 9 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

60C Who presides at meetings of Board

- (1) At all meetings of the Board, the chairperson presides if he or she is present and willing to do so.
- (2) The non-executive directors present must appoint 1 of their number to be the chairperson for the meeting if—
 - (a) the chairperson is not present; or
 - (b) there is no chairperson; or
 - (c) the chairperson is present, but is unwilling or unable to preside.
- (3) The person appointed under subsection (2) has and may exercise all the powers, duties, and functions of the chairperson for the purposes of that meeting.

Sections 60A to 60C were inserted, as from 21 August 2003, by section 9 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

61 Directors to disclose interests

- (1) A director who is interested in a contract or proposed contract with the Bank, or in the exercise or proposed exercise by the Bank of a power, shall declare that interest at every meeting of the Board at which that contract or proposed contract, or the exercise or proposed exercise of the power, is considered by the Board.

- (2) A director who is interested in a contract or proposed contract or in the exercise or proposed exercise of a power—
- (a) Is not entitled to vote on a resolution that relates to the contract or proposed contract or the exercise or proposed exercise of the power;
 - (b) Shall not be counted for the purpose of determining whether a quorum is present when—
 - (i) The contract or proposed contract or the exercise or proposed exercise of the power is considered by the Board; or
 - (ii) A resolution relating to the contract or proposed contract or the exercise or proposed exercise of the power is voted on.

Subsection (2) was substituted by section 3 Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96).

62 Committees

- (1) The Board may, from time to time, appoint committees of 1 or more directors and may delegate any of its functions and powers, except this power of delegation, to such committees.
- (2) The Board may from time to time—
 - (a) Discharge, alter, or reconstitute a committee; or
 - (b) Discharge a member of a committee and appoint another member in that member's place.
- (3) Subject to any direction given by the Board, the functions and powers delegated to a committee may be performed or exercised with the same effect as if they had been conferred by this Act and not by delegation.
- (4) A committee purporting to act under delegation shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the delegation.
- (5) A delegation may be revoked by the Board at any time.
- (6) A delegation does not prevent the Board from performing or exercising its functions and powers.
- (7) A delegation to a committee shall continue in force even though the membership of the Board or the committee changes.

- (8) Subject to this Act and to any directions given by the Board, a committee may regulate its own procedure.

63 Fees and expenses of non-executive directors

- (1) The Bank shall pay the non-executive directors such fees as the Minister, after considering any recommendation by the Board, determines.
- (2) The Bank shall pay the non-executive directors travelling and other expenses incurred in carrying out their duties.

Compare: 1964 No 134 s 15; 1980 No 138 s 2(1)

Part 4

Use of words bank, banker, and banking

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). The heading to the previous Part 4 read “Use of Words **bank**, **banker**, and **banking**”. See sections 49 to 52 of that Act as to the transitional provisions.

Limit on use of restricted words in name or title

64 Limit on use of restricted words in name or title

- (1) No person may—
- (a) be formed, incorporated, or registered using a name or title that includes a restricted word; or
 - (b) change a person’s name or title to a name or title that includes a restricted word; or
 - (c) carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word.
- (2) Subsection (1) does not apply to—
- (a) the Bank; or
 - (b) a registered bank; or
 - (c) any person who is authorised by the Bank under section 65 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 that authorisation; or
 - (d) any person who is exempted under section 66 but only to the extent that the person is acting within the scope of that exemption.

- (3) Despite subsection (2)(b), a registered bank must not use, without an authorisation from the Bank under section 65(1)(e), a name or title that includes a restricted word in respect of a unit trust of which the registered bank is a trustee or a manager within the meaning of the Unit Trusts Act 1960.
- (4) Subsection (2)(b) does not extend to a person carrying on any activity by means of, or through the agency of, a registered bank.
- (5) A person commits an offence if the person contravenes this section.
- (6) The penalty for an offence against this section is set out in section 66M.
- (7) In this section (except subsection (1)(a) to (c)) and sections 65 and 66, **use**, in relation to a restricted word, means act in a manner prohibited by subsection (1)(a) to (c) (as the context requires).

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

65 Bank may authorise use of restricted words in name or title

- (1) The Bank may authorise any of the following persons to use a name or title that includes a restricted word:
 - (a) a person licensed or registered as a bank in a country other than New Zealand:
 - (b) a class of persons licensed or registered as banks in a country other than New Zealand:
 - (c) a person that is formed, incorporated, or registered to represent the interests of—
 - (i) any registered bank; or
 - (ii) any person connected with a registered bank:
 - (d) an associated person of a registered bank:
 - (e) a registered bank or an associated person of a registered bank that intends to use a name or title that includes a restricted word in respect of a unit trust of which the registered bank or the associated person is a trustee or manager within the meaning of the Unit Trusts Act 1960:

- (f) a person that is not a financial institution.
- (2) In the case of an authorisation under subsection (1)(a), the Bank must—
 - (a) give the authorisation by notice in writing to the person; and
 - (b) impose both of the following conditions:
 - (i) the condition that the person use a particular name or title approved by the Bank; and
 - (ii) the condition that the person carry on in New Zealand only those activities specified by the Bank in the notice.
- (3) In the case of an authorisation under subsection (1)(b), the Bank must—
 - (a) give the authorisation by notice in the *Gazette*; and
 - (b) impose the condition that each member of the class of persons carries on in New Zealand only those activities specified by the Bank in the notice in the *Gazette* in respect of the class to which that member belongs.
- (4) In the case of an authorisation under subsection (1)(c) to (f), the Bank must—
 - (a) give the authorisation by notice in writing to the person; and
 - (b) impose the condition that the person uses a particular name or title approved by the Bank.
- (5) Nothing in subsections (2) to (4) prevents the Bank from imposing any other conditions to the authorisation that it thinks fit.
- (6) The Bank may, at any time, revoke an authorisation, or vary or remove a condition of an authorisation, or add a condition of an authorisation, by,—
 - (a) in the case of an authorisation that relates to a person, notice in writing to the person; or
 - (b) in the case of an authorisation that relates to a class of persons, notice in the *Gazette*.
- (7) Any authorisation given under this section 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 that authorisation.

The original subsection (2): pursuant to section 13 Private Savings Banks (Transfer of Undertakings) Act 1992 (1992 No 21), as from 8 April 1992, nothing in this section applies to a company to which the Private Savings Bank Act 1983 has ceased to apply.

The original subsection (9) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* section 50 of that Act for savings relating to the use of a restricted word. *See* sections 49 to 52 of that Act as to the transitional provisions.

66 Certain persons exempt from application of section 64

Nothing in section 64(1) applies to a person using a name or title that includes a restricted word if—

- (a) the restricted word signifies a geographic place name or the name of a natural person; and
- (b) the name or title is not used in respect of a financial institution, or could not reasonably be mistaken for the name or title of a financial institution.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66A Application of Companies Act 1993

Nothing in sections 65 and 66 affects or limits 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).

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Limit on use of restricted words in advertisement

66B Limit on use of restricted words in advertisement

- (1) No specified person may use a restricted word in any advertisement unless the advertisement contains a statement that complies with subsection (2).
- (2) The statement must—

- (a) state that the specified person is not a registered bank; 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) A specified person commits an offence if the specified person contravenes this section.
- (4) The penalty for an offence against this section is set out in section 66M.
- (5) In this section and sections 66D and 66M,—
advertisement —
 - (a) means any thing 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** means a person that—
 - (a) is a financial institution; and
 - (b) is not a registered bank.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Powers of Bank in relation to use of restricted words

66C Power to obtain information

- (1) If the Bank believes or has reasonable grounds for believing that there has been a contravention of section 64 or section 66B, the Bank, for the purpose of determining whether there has been a contravention of either of those sections, may, by notice in writing, require any person to—
 - (a) produce to the Bank a document in the person's possession, custody, or control;
 - (b) supply the Bank with information or an explanation about any information.
- (2) The Bank may exercise the power in subsection (1) only if the Bank has reasonable cause to believe that the person may

have information or documents relevant to the purpose of that subsection.

- (3) A person to whom a notice is given must comply with the notice within the period of time specified by the Bank (which period must be reasonable in the circumstances).
- (4) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- (5) The penalty for an offence against this section is set out in section 66M.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66D 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 64 or section 66B, it may, by notice in writing, require that person to—
 - (a) change that 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) The Bank may require any person to whom a notice is given to supply the Bank with information or documents that may be necessary for the Bank to verify that the notice has been complied with.
- (3) A person must comply with a requirement of the Bank under this section within the period of time specified by the Bank (which period must be reasonable in the circumstances).
- (4) A person commits an offence if the person fails to comply with this section.
- (5) The penalty for an offence against this section is set out in section 66M.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66E Power to appoint person to enter and search premises

- (1) This section applies if the Bank has reasonable cause to believe—
 - (a) that any information or documents supplied to the Bank under section 66C or section 66D(2) are false or misleading in a material particular; or
 - (b) that a person has failed to comply with any requirement to supply information or documents under section 66C or section 66D(2).
- (2) If this section applies, the Bank may appoint, in writing, any suitably qualified person to enter and search any premises.
- (3) A person appointed under subsection (2) may—
 - (a) inspect, remove, and take copies of any documents relating to the use of a restricted word that may be in the possession, custody, or control of any person; and
 - (b) if necessary, require the reproduction in usable form of any information recorded or stored in those documents.
- (4) A person commits an offence if, without lawful justification or excuse, the person hinders, obstructs, or delays the conduct of any search by a person appointed under subsection (2).
- (5) The penalty for an offence against this section is set out in section 66M.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66F Requirements on entering and searching premises

- (1) A person appointed under section 66E(2) must not enter and search any premises, or inspect, remove, or take copies of any documents in the possession, custody, or control of any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless—
 - (a) the occupier of the premises, or the person who has possession, custody, or control of the documents, agrees; or
 - (b) the person appointed under section 66E(2) obtains a warrant under section 66I.

- (2) A person authorised to enter and search any premises under a warrant must, on first entering those premises and, if requested, at any subsequent time, produce—
- (a) evidence of that person's authority to enter the premises; and
 - (b) evidence of that person's identity.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66G Confidentiality of information or documents

- (1) This section applies to information or documents supplied or disclosed to, or obtained by, the Bank for the purposes of, or in connection with, the exercise of powers conferred by this Part.
- (2) The Bank, any officer or employee of the Bank, or a person appointed under section 66E(2) must not publish or disclose any information or documents to which this section applies except—
- (a) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or
 - (b) to the extent that the information is available to the public under any Act, including the Official Information Act 1982, or is otherwise publicly available; or
 - (c) for the purposes of, or in connection with, the exercise of powers conferred by this Part; or
 - (d) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or
 - (e) to any central bank, authority, or body in any other country that exercises functions that correspond with, or are similar to, those conferred on the Bank under this Act for the purposes of the exercise by that central bank, authority, or body of those functions; or
 - (f) to any person who the Bank is satisfied has a proper interest in receiving the information.

- (3) The Bank, any officer or employee of the Bank, or a person appointed under section 66E(2) must not publish or disclose any information or documents under subsection (2)(e) or (f) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of that information or those documents.
- (4) A person referred to in subsection (5) commits an offence if the person contravenes this section.
- (5) The persons are—
 - (a) any officer or employee of the Bank; or
 - (b) a person appointed under section 66E(2).
- (6) The penalty for an offence against this section is set out in section 66M.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66H Limits on further disclosure of information or documents published or disclosed under section 66G

- (1) A person to whom any information or documents are published or disclosed under section 66G must not publish, disclose, or use that information or those documents unless the publication, disclosure, or use is,—
 - (a) in the case of a publication or disclosure under section 66G(2)(a), in accordance with the terms and conditions of the consent referred to in that paragraph;
 - (b) in the case of a publication or disclosure under section 66G(2)(c),—
 - (i) for the purposes of, or in connection with, the exercise of powers conferred by this Part; and
 - (ii) in accordance with any conditions that the Bank may have imposed;
 - (c) in the case of a publication or disclosure under section 66G(2)(f),—
 - (i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or

- (ii) necessary or desirable for the performance of any function or exercise of any power conferred by any enactment.
- (2) A person commits an offence if the person contravenes this section.
- (3) The penalty for an offence against this section is set out in section 66M.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66I Procedure for obtaining warrants

A Judge of the High Court may issue a warrant to a person appointed under section 66E(2) if the Judge is satisfied, on application in writing made on oath, that there are reasonable grounds for believing —

- (a) that any information or documents supplied to the Bank under section 66C or section 66D(2) are false or misleading in a material particular; or
- (b) that a person has failed to comply with any requirement to supply information or documents under section 66C or section 66D(2).

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66J Effect of warrant

- (1) A warrant authorises the person named in it, at any time and, if necessary, by force, to—
 - (a) enter and search the premises specified in the warrant:
 - (b) inspect, remove, and take copies of documents that the person executing the warrant believes on reasonable grounds may be relevant:
 - (c) if necessary, require any information recorded or stored in those documents to be reproduced in usable form.
- (2) The warrant continues in force for a period of 1 month or until the purpose for which it was granted has been satisfied, whichever is the lesser.

- (3) Every person named in the warrant must, as soon as practicable after removing any documents from any premises, supply a copy of the documents to the person from whose possession, custody, or control the documents were removed.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66K Effect of proceedings

- (1) If any person commences any proceedings in any court in respect of the exercise of any powers conferred by section 66E, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be, exercised as if the proceedings had not been commenced, and no person is excused from fulfilling any obligation under that section by reason of those proceedings.
- (2) This section applies despite the provisions of any other Act or any rule of law.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

66L Effect of final decision that exercise of powers under section 66E unlawful

- (1) This section applies if—
- (a) any power conferred by section 66E has been exercised; and
 - (b) that exercise has been declared to be unlawful in a final decision given in proceedings in respect of the exercise of that power.
- (2) The Bank must ensure that, as soon as practicable after the decision is given,—
- (a) any information supplied by a person and any documents or records obtained as a result of the unlawful exercise of the power are returned to the person previously having possession, custody, or control of those documents or records, and any copies of those documents or records are destroyed:

- (b) any documents or records derived from, or based on, the documents or records are destroyed.
- (3) No information, documents, or records obtained as a result of the unlawful exercise of the power are admissible in evidence in any proceedings.

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Penalty for offences against this Part

66M Penalty for offences

- (1) A person who commits an offence against any of the provisions listed in subsection (2) is liable, on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.
- (2) The provisions are—
 - (a) section 64 (which relates to the use of restricted words in a name or title);
 - (b) section 66B (which relates to the use of restricted words in an advertisement);
 - (c) section 66C (which relates to failing to produce a document or supply information to the Bank after being required to do so);
 - (d) section 66D (which relates to failing to change a person's name or title or cease using a restricted word in an advertisement or cease carrying on any activity after being required to do so);
 - (e) section 66E (which relates to obstructing a person appointed to conduct a search);
 - (f) section 66G (which relates to breaches of confidentiality provisions);
 - (g) section 66H (which relates to further disclosures of information).

Part 4 (comprising sections 64 to 66) was substituted by a new Part 4 (comprising sections 64 to 66M), as from 21 August 2003, by section 10 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Part 5

Registration of banks and prudential supervision of registered banks

67A Interpretation in this Part

In this Part, unless the context otherwise requires,—

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 of the Parliament of the Commonwealth of Australia

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

prescribed Australian financial authority means an Australian public authority prescribed by regulations made under section 68A.

Section 67A was inserted, as from 15 December 2006, by section 5 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51). *See* clause 2 Reserve Bank of New Zealand Amendment Act 2006 Commencement Order 2006 (SR 2006/372).

67 Registration and prudential supervision

The Bank shall in accordance with this Part of this Act—

- (a) Register banks; and
- (b) Undertake prudential supervision of registered banks.

Compare: 1964 No 134 s 38I; 1986 No 131 s 10

68 Exercise of powers under this Part

The powers conferred on the Governor-General, the Minister, and the Bank by this Part of this Act shall be exercised for the purposes of—

- (a) Promoting the maintenance of a sound and efficient financial system; or
- (b) Avoiding significant damage to the financial system that could result from the failure of a registered bank.

Compare: 1964 No 134 s 38J; 1986 No 131 s 10

68A Trans-Tasman co-operation

- (1) When performing functions or duties or exercising powers under this Part, the Bank must—
 - (a) support prescribed 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 detrimental effect on financial system stability in Australia.
- (2) Subsection (3) applies where the Bank has reasonable cause to believe that an action it proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia.
- (3) The Bank must, to the extent it considers reasonably practicable in the circumstances having regard to urgency or other similar constraint, consult with and consider the advice of every prescribed Australian financial authority it considers to be relevant in the circumstances before taking the proposed action.
- (4) No performance of a function or duty or exercise of a power is invalid by reason only of a failure to comply with the provisions of this section.
- (5) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing Australian financial authorities for the purposes of this section and section 121A.

Section 68A was inserted, as from 15 December 2006, by section 6 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51). See clause 2 Reserve Bank of New Zealand Amendment Act 2006 Commencement Order 2006 (SR 2006/372).

Registration of banks

69 Register

- (1) The Bank must keep a public register of persons known as registered banks.
- (2) The Bank must determine the form of the register and may amend the form from time to time as it considers necessary.
- (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.

Section 69 was substituted, as from 1 November 2006, by section 7 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

70 Application for registration

- (1) Any person may apply to the Bank to be registered as a registered bank.
- (2) Applications to be registered as a registered bank shall be—
 - (a) Made in such manner as may be specified by the Bank; and
 - (b) Accompanied by payment of such fee as may be determined by the Bank from time to time and approved by the Minister by notice in the *Gazette*.
- (3) Every person who makes an application under this section shall furnish to the Bank such information as may be required by the Bank to assist it in determining the application.
- (4) A person commits an offence if the person provides false or misleading information to the Bank for the purposes of an application.
- (5) The penalty for an offence against this section is set out in section 156AC.

Compare: 1964 No 134 s 38C(3), (4), (5); 1986 No 131 s 10

Subsections (4) and (5) were inserted, as from 21 August 2003, by section 11 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

71 Voluntary removal of name from register

- (1) A registered bank may, by notice in writing, require the Bank to remove the name of that registered bank from the register on a date specified in the notice, not being a date earlier than

28 days, or such shorter period as the Bank may agree to, after the date the notice is given.

- (2) The registered bank shall, within 7 days of giving that notice, give public notice of the fact that it had given the notice to the Bank.
- (3) The Bank must—
 - (a) remove the name of the registered bank from the register on the date specified in the notice; and
 - (b) within 7 days after that date, arrange for the publication in the *Gazette* of a notice that indicates the removal of that name.
- (4) Except with the consent of the Bank, a registered bank shall not give a notice under subsection (1) of this section if—
 - (a) A notice has been given to that registered bank under section 99(2)(a) of this Act; or
 - (b) A person has been appointed under section 99(2)(b) of this Act to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
 - (c) A person has been appointed under section 101 of this Act to carry out an investigation of the affairs of that registered bank; or
 - (d) A direction is in force under section 113 of this Act in relation to that registered bank; or
 - (e) The registered bank is subject to statutory management.
- (5) The Bank may refuse to remove the name of a registered bank from the register if—
 - (a) A notice has been given to the registered bank under section 99(2)(a) of this Act; or
 - (b) A person has been appointed under section 99(2)(b) of this Act to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
 - (c) A person has been appointed under section 101 of this Act to carry out an investigation into the affairs of that registered bank; or
 - (d) A direction is in force under section 113 of this Act in relation to that registered bank; or
 - (e) The registered bank is subject to statutory management.

Subsection (3) was substituted, as from 21 August 2003, by section 12 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4)(a) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “section 99(2)(a)” for the expression “section 99(1)(d)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “section 99(2)(b)” for the expression “section 99(1)(e)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4)(d) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “direction is in force under section 113” for the words “notice is in force under section 111”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (5)(a) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “section 99(2)(a)” for the expression “section 99(1)(d)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (5)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “section 99(2)(b)” for the expression “section 99(1)(e)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (5)(d) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “direction is in force under section 113” for the words “notice is in force under section 111”. *See* sections 49 to 52 of that Act as to the transitional provisions.

72 Offence for person who is not registered bank to hold itself out to be registered bank

- (1) A person commits an offence if the person—
 - (a) is not a registered bank; and
 - (b) uses any name, title, trade mark, style, designation, or description that represents or implies that the person is a registered bank.
- (2) The penalty for an offence against this section is set out in section 156AC.

Section 72 was substituted, as from 21 August 2003, by section 13 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

73 Determination of applications

- (1) The Bank shall not register any person as a registered bank unless it is satisfied that the business carried on, or proposed to be carried on, by the applicant consists of, or to a substantial extent consists of, or will, or will to a substantial extent, consist of, the borrowing and lending of money, or the provision of other financial services, or both.
- (2) In determining an application under section 70, the Bank must have regard to all of the following:
 - (a) the incorporation and ownership structure of the applicant; and
 - (b) the size and nature of the applicant's business or proposed business, or any part of the applicant's business or proposed business; and
 - (c) the ability of the applicant to carry on its business or proposed business in a prudent manner; and
 - (d) the standing of the applicant in the financial markets; and
 - (e) the suitability for their positions of the directors and senior managers of the applicant; and
 - (f) the standing of the owner of the applicant in the financial markets; and
 - (g) any other matters that may be prescribed in regulations.
- (3) For the purposes of subsection (2)(g) of this section, the Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing additional matters to which the Bank shall have regard in considering applications for registration.
- (4) The Bank shall give notice in the *Gazette* of the registration of any person as a registered bank under this section.

Compare: 1964 No 134 s 38D(1), (2), (4); 1986 No 131 s 10

Subsection (2) was substituted, as from 21 August 2003, by section 14 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

73A Further matters to which Bank must have regard if applicant is overseas person

In determining an application from an overseas person, the Bank must, in addition to the matters set out in section 73(2), have regard to all of the following:

- (a) the law and regulatory requirements of the applicant's home jurisdiction that relate to—
 - (i) the recognition and priorities of claims of creditors or classes of creditors in the event of the insolvency of the applicant; and
 - (ii) the disclosure by the applicant of financial and other information of the kind that a registered bank must disclose under section 81; and
 - (iii) the accounting and auditing standards applicable to the applicant; and
 - (iv) the duties and powers of directors of the applicant; and
 - (v) the licensing, registration, authorisation, and supervision of the applicant; and
- (b) the nature and extent of the financial and other information disclosed to the public by the applicant.

Sections 73A and 73A were inserted, as from 21 August 2003, by section 15 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

73B Further matters to which Bank must have regard if applicant is subsidiary of overseas person

In determining an application from a subsidiary of an overseas person, the Bank must, in addition to the matters set out in section 73(2), have regard to all of the following:

- (a) the law and regulatory requirements of the home jurisdiction of the overseas person that relate to—
 - (i) the disclosure by the overseas person of financial and other information of the kind that a registered bank must disclose under section 81; and
 - (ii) the accounting and auditing standards applicable to the overseas person; and
 - (iii) the duties and powers of the directors of the overseas person; and

- (iv) the licensing, registration, authorisation, and supervision of the overseas person; and
- (b) the nature and extent of the financial and other information disclosed to the public by the overseas person.

Sections 73A and 73A were inserted, as from 21 August 2003, by section 15 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

74 Conditions of registration

- (1) A person may be registered as a registered bank unconditionally or subject to any conditions that the Bank may impose.
- (2) The Bank may, by notice in writing to a registered bank,—
 - (a) impose conditions of registration (whether or not the registration of the bank is subject to conditions); or
 - (b) vary, remove, add to, or substitute any conditions of registration.
- (3) The Bank must not exercise a power referred to in subsection (2) unless—
 - (a) the Bank gives the registered bank not less than 7 days' notice in writing of the Bank's intention to do so; and
 - (b) the notice contains, or is accompanied by, a statement of the Bank's reasons; and
 - (c) the registered bank has a reasonable opportunity to make submissions to the Bank; and
 - (d) the Bank has regard to those submissions.
- (4) The Bank may impose conditions that relate to any of the following matters:
 - (a) the matters to which the Bank must have regard under sections 73 to 73B in determining an application for registration, including any matters prescribed by regulations made under section 73(2)(g); and
 - (b) the matters referred to in section 78, including any matters prescribed by regulations made under that section; and
 - (c) the matters referred to in section 81, including any matters prescribed by an Order in Council made under that section.

- (5) A registered bank commits an offence if the registered bank fails to comply with a condition of registration imposed by the Bank under this section.
- (6) The penalty for an offence against this section is set out in section 156AB.

The original subsection (2) was substituted, as from 24 March 1995, by section 3 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

The original subsection (3) was substituted, as from 24 March 1995, by section 3 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 74 was substituted, as from 21 August 2003, by section 16 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

75 Publication of principles

The Bank shall publish the principles on which it acts, or proposes to act,—

- (a) In determining applications for registration; and
- (b) In imposing, varying, removing, or adding to conditions of registration.

76 Registration of certain persons

- (1) Every person, that immediately before the commencement of this Act, was a registered bank, or deemed to be a registered bank, pursuant to Part 5A of the Reserve Bank of New Zealand Act 1964, shall continue to be a registered bank as if that person had been registered under this Act.
- (2) If that person was registered, or deemed to have been registered, under that Act subject to any conditions, those conditions shall continue to apply as if they had been imposed under section 74 of this Act.
- (3) Nothing in subsection (1) or subsection (2) of this section limits any other provisions of this Part of this Act.

77 Cancellation of registration

- (1) The Minister may, by notice in writing to the Bank given in accordance with a recommendation of the Bank, direct the Bank to cancel the registration of a registered bank.
- (2) The Bank shall not make a recommendation under subsection (1) of this section unless it is satisfied—

- (a) That the registered bank was registered on information that was false or misleading in a material particular; or
- (b) that, in relation to a registered bank,—
 - (i) there has been a change in any of the matters to which the Bank must have regard under section 73 (including a change in any of the matters prescribed by regulations made under section 73(2)(g)); and
 - (ii) the Bank considers the change to be materially adverse to the registered bank's standing or financial position; or
- (ba) that, in relation to a registered bank,—
 - (i) there has been a transfer of direct or indirect control of the registered bank; and
 - (ii) the Bank considers the transfer to be materially adverse to the registered bank's standing or financial position; or
- (bb) that, in relation to a registered bank,—
 - (i) there has been a change in any of the matters to which the Bank must have regard under section 73A or section 73B; and
 - (ii) the Bank considers the change to be materially adverse; or
- (c) If the registered bank is a body corporate—
 - (i) That an order has been made for the winding up of that body corporate; or
 - (ii) That a resolution has been passed for the voluntary winding up of that body corporate; or
 - (iii) That a receiver has been appointed in respect of that body corporate; or
 - (d)
- (e) That a condition of registration has not been complied with; or
- (f) That the registered bank has not carried on its business in a prudent manner; or
- (g) That the registered bank has failed to comply with an obligation imposed under this Act or imposed by regulations made under this Act.

- (3) The Bank shall not make a recommendation under subsection (1) of this section unless—
 - (a) The Bank gives the registered bank not less than 7 days' notice in writing of the Bank's intention to consider making the recommendation; and
 - (b) The notice contains or is accompanied by a statement of the Bank's reasons; and
 - (c) The registered bank has a reasonable opportunity to make submissions to the Bank; and
 - (d) The Bank has regard to those submissions.
- (4) A copy of any written submission made by the registered bank shall be sent to the Minister together with any recommendation by the Bank.
- (5) The Bank must, as soon as practicable after receiving a notice from the Minister under subsection (1),—
 - (a) inform the registered bank in writing of—
 - (i) the fact that the Minister has directed the Bank to cancel the registration of the registered bank; and
 - (ii) the grounds on which the Bank's recommendation to cancel the registration of the registered bank was made; and
 - (iii) the date of cancellation of the registration of the registered bank; and
 - (b) publish a notice of the cancellation in the *Gazette*.

Compare: 1964 No 134 s 38F(1), (2), (3)(a)-(e), (g), (4), (5); 1986 No 131 s 10

Subsection (1) was substituted, as from 21 August 2003, by section 17(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(b) was substituted, as from 21 August 2003, by section 17(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(ba) and (2)(bb) was inserted, as from 21 August 2003, by section 17(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(d) was repealed, as from 21 August 2003, by section 17(3)(a) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(g) was amended, as from 21 August 2003, by section 17(3)(b) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words "or imposed by regulations made under this Act". See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 24 March 1995, by section 4 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Subsection (5) was substituted, as from 21 August 2003, by section 17(4) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

77A Changes of ownership

- (1) A person must obtain the written consent of the Bank before giving effect to a transaction if,—
 - (a) in the case of a person who does not have a significant influence over a registered bank, the transaction would result in that person acquiring a significant influence over that registered bank; or
 - (b) in the case of a person who has, with the consent of the Bank, acquired a significant influence over a registered bank, the transaction would result in that person increasing the level of the person's significant influence over that registered bank beyond the level permitted in the existing consent; or
 - (c) in the case of a person who acquired a significant influence over a registered bank before the commencement of the Reserve Bank of New Zealand Amendment Act 2003, the transaction would result in that person increasing the person's significant influence over that registered bank beyond the existing level.
- (2) The Bank may, in giving its consent,—
 - (a) specify the level of significant influence that a person may have or acquire over any registered bank without the need for a further consent; and
 - (b) impose any terms and conditions the Bank thinks fit.
- (3) The Bank may, at any time, by notice in writing, vary or revoke—
 - (a) a consent given under this section; or
 - (b) any term or condition of a consent.
- (4) A person commits an offence if the person fails to comply with subsection (1).
- (5) The penalty for an offence against this section is set out in section 156AA.

- (6) For the purposes of this section, a reference to a registered bank is a reference to a registered bank that is not an overseas person.

Sections 77A and 77B were inserted, as from 21 August 2003, by section 18 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

77B Effect of section 77A on contracts, etc

Nothing in section 77A invalidates any contract, or transfer of ownership, made without the written consent of the Bank.

Sections 77A and 77B were inserted, as from 21 August 2003, by section 18 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

78 Carrying on business in prudent manner

(1) In—

- (a) Having regard, under section 73(2)(c) of this Act, to the ability of an applicant for registration as a registered bank to carry on its business or proposed business in a prudent manner; or
- (b) Determining under section 77(2)(f) or section 113(1)(e) of this Act that a registered bank has not carried on its business in a prudent manner,—

the Bank shall confine its consideration to the following matters:

- (c) Capital in relation to the size and nature of the business or proposed business:
- (d) Loan concentration or proposed loan concentration and risk exposures or proposed risk exposures:
- (e) Separation of the business or proposed business from other business and from other interests of any person owning or controlling the applicant or registered bank:
- (f) Internal controls and accounting systems or proposed internal controls and accounting systems:
- (fa) risk management systems and policies or proposed risk management systems and policies:
- (fb) arrangements for any business, or functions relating to any business, of the applicant or registered bank to be carried on by any person other than the applicant or the registered bank:

- (g) Such other matters as may from time to time be prescribed in regulations.
- (2) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing additional matters for the purposes of subsection (1)(g) of this section.
- (3) The Governor may, from time to time, issue, in such manner as the Governor may determine, guidelines for the purpose of interpreting any of the matters referred to in paragraphs (c) to (g) of subsection (1) of this section.

Subsection (1)(b) was amended, as from 21 August 2003, by section 19(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or section 113(1)(e)” after the expression “section 77(2)(f)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(fa) and (1)(fb) was inserted, as from 21 August 2003, by section 19(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 24 March 1995, by section 5 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5) by substituting the word “may” for the word “shall”.

79 Annual fee

[Repealed]

Section 79 was repealed, as from 1 January 1996, by section 6(1) Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5). *See* clause 2 Reserve Bank of New Zealand Amendment Act Commencement Order 1995 (SR 1995/249).

80 Credit rating of registered banks

- (1) The Bank may, by notice in writing to any registered bank or to all registered banks or to all members of any class of registered banks, require each of those banks to—
 - (a) obtain a rating of its creditworthiness or financial condition by a person or organisation nominated or approved by the Bank; and
 - (b) maintain a current rating of the type referred to in paragraph (a).
- (2) The Bank may require a registered bank to publish the registered bank’s current rating, and all the qualifications to that rating, in the manner and with the frequency that the Bank directs.

- (3) A person commits an offence if the person fails to comply with this section.
- (4) The penalty for an offence against this section is set out in section 156AC.

Section 80 was substituted, as from 21 August 2003, by section 20 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Financial disclosure by registered banks

81 Public disclosure of information or data by registered banks

- (1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Bank, prescribe information or data that must be published by
 - (a) all registered banks; or
 - (b) any class of registered banks specified in the order.
- (2) A registered bank to which an Order in Council applies must publish the information or data specified in the order—
 - (a) in a document to be known as a disclosure statement; and
 - (b) in the manner and with the frequency specified in the order.
- (3) The information or data that may be prescribed in an Order in Council includes, without limitation, information or data about—
 - (a) the corporate matters of a registered bank; and
 - (b) the financial matters of a registered bank; and
 - (c) the prudential matters of a registered bank; and
 - (d) any other matters relating to the business, operation, and management of a registered bank.
- (4) The Order in Council must be published in the *Gazette*.
- (5) The Regulations (Disallowance) Act 1989 applies to the Order in Council as if the order were a regulation within the meaning of section 2 of that Act.

Section 81 was substituted, and section 81A was inserted, as from 24 March 1995, by section 7 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 81 was substituted, as from 21 August 2003, by section 21 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

81AA Further matters that maybe prescribed

- (1) An Order in Council made under section 81 may, in addition to the matters referred to in section 81(3), require a registered bank to disclose information or data—
 - (a) about an associated person of the registered bank if the associated person is incorporated, domiciled, or resident in New Zealand;
 - (b) about an associated person of the registered bank if the information or data is publicly available in the country in which the associated person is incorporated, domiciled, or resident and if that country is not New Zealand;
 - (c) about any individual member of its banking group, whether or not the member is incorporated, domiciled, or resident in New Zealand;
 - (d) about a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of the registered bank has a substantial interest.
- (2) An Order in Council made under section 81 may also—
 - (a) prescribe the information that is required to be contained in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993) in financial statements;
 - (b) require the publication of financial statements and notes to those statements for any period or periods specified in the order;
 - (c) require the information to be published in consolidated form;
 - (d) require financial information that is required to be published to be taken from audited financial statements;
 - (e) require the information that is required to be published to be audited and to be accompanied by an auditor's report;
 - (f) require a disclosure statement to contain any statements specified in the order that are made by—

- (i) the directors of the registered bank or persons authorised in writing by the directors of the bank; and
- (ii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer.

Sections 81AA to 81AC were inserted, as from 21 August 2003, by section 21 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

81AB Disclosure statement not required to include information or data about customers or clients of registered banks

- (1) Despite sections 81 and 81AA, a registered bank is not required to publish in a disclosure statement any information or data about the affairs of a particular customer or client of—
 - (a) the registered bank; or
 - (b) an associated person of the registered bank; or
 - (c) a company in which a holding company of the registered bank has a substantial interest.
- (2) Nothing in subsection (1) applies to the publication by a registered bank of information or data about transactions with related parties of—
 - (a) the registered bank; or
 - (b) an associated person of the registered bank; or
 - (c) a company in which a holding company of the registered bank has a substantial interest.
- (3) Subsection (1) does not extend to the publication of the following matters:
 - (a) the amount of any loan or risk exposure (without disclosing the identity of the particular customer or client to whom it relates); or
 - (b) the number of loans or risk exposures that fall within a specified range of amounts and the actual amounts of those loans or risk exposures; or
 - (c) the number of loans or risk exposures that fall within a specified range of percentages or are above a specified percentage, as the case may be, of the capital or equity of the registered bank, or an associated person of the registered bank, or the banking group or a company in

which a holding company of a registered bank has a substantial interest, and the actual amounts involved.

Sections 81AA to 81AC were inserted, as from 21 August 2003, by section 21 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

81AC Duty to supply information or data to registered bank

- (1) This section applies to—
 - (a) an associated person of a registered bank; and
 - (b) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of a registered bank has a substantial interest.
- (2) A person to whom this section applies must, on being required by a registered bank to do so for the purpose of enabling the registered bank to comply with an Order in Council made under section 81, supply the registered bank with any information or data that the registered bank may be required to disclose under section 81AA if that information or data—
 - (a) is in the possession, custody, or control of that person; and
 - (b) is not in the possession, custody, or control of the registered bank.
- (3) A person to whom this section applies commits an offence if, without lawful justification or excuse, the person fails to comply with a requirement of a registered bank under this section.
- (4) The penalty for an offence against this section is set out in section 156AC.

Sections 81AA to 81AC were inserted, as from 21 August 2003, by section 21 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

81A Bank to consult

- (1) Before making a recommendation under section 81(1) of this Act (including a recommendation to amend any Order in Council made under that subsection) the Bank must—
 - (a) Consult with—
 - (i) The Securities Commission; and
 - (ii) Registered banks that will be affected by any Order in Council made under that subsection; and

- (iii) Such other persons as the Bank considers will be substantially affected by any Order in Council made under that subsection or organisations representing those persons; and
 - (b) Ensure that the persons referred to in paragraph (a) of this subsection have a reasonable opportunity to make submissions to the Bank; and
 - (c) Have regard to those submissions.
- (2) Failure to comply with subsection (1) of this section does not affect the validity of any Order in Council under section 81(1) of this Act.
- (3) Any action taken by the Bank before the coming into force of the Reserve Bank of New Zealand Amendment Act 1995 that would, if this section had then been in force, have constituted action taken under this section, shall be treated as having been taken under this section.

Section 81 was substituted, and section 81A was inserted, as from 24 March 1995, by section 7 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

82 Disclosure statements must be signed

- (1) Every disclosure statement that a registered bank is required to publish under section 81 must be dated and signed,—
 - (a) in the case of a body corporate, by every director of the body corporate or by each director's agent authorised in writing to do so; and
 - (b) in the case of an overseas incorporated registered bank, by its New Zealand chief executive officer or that person's agent authorised in writing to do so.
- (2) Every overseas incorporated registered bank must notify the Bank in writing of the name and address of its New Zealand chief executive officer and any subsequent changes to those details.
- (3) If an overseas incorporated registered bank fails to comply with subsection (2), the Bank may, after giving the registered bank 14 days' notice in writing of its intention to do so, specify a particular employee of that registered bank to be its New Zealand chief executive officer for the purposes of this Act.

- (4) If the Bank exercises the power conferred by subsection (3), it must give notice in writing to the registered bank as soon as practicable.

Section 82 was substituted, as from 21 August 2003, by section 22 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

83 Bank may require disclosure statement to be corrected

Where the Bank considers that a disclosure statement published by a registered bank—

- (a) Contains information that is false or misleading; or
- (b) Does not contain information which it is required to contain, whether or not the information contained in the disclosure statement is false or misleading as a result of the omission,—

the Bank may, by notice in writing to the registered bank, require the registered bank to—

- (c) Publish a disclosure statement that does not contain false or misleading information; or
- (d) Publish a disclosure statement that contains the information that was previously omitted; or
- (e) Take such other corrective action as the Bank may specify in the notice.

Paragraph (d) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the word “previously” after the word “was”. *See* sections 49 to 52 of that Act as to the transitional provisions.

84 Interpretation

[Repealed]

Section 84, and the preceding heading “Advertising by Registered Banks”, was repealed, as from 24 March 1995, by section 8 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

85 Content of advertisements by registered banks

[Repealed]

Section 85 was repealed, as from 24 March 1995, by section 8 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

86 Regulations

[Repealed]

Section 86 was repealed, as from 24 March 1995, by section 8 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

87 Offence to advertise in contravention of regulations

[Repealed]

Section 87 was repealed, as from 24 March 1995, by section 8 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

88 Bank may prohibit advertisements by registered banks

[Repealed]

Section 88 was repealed, as from 24 March 1995, by section 8 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Provisions applying to disclosure statements

The heading “Provisions Applying to Disclosure Statements” was substituted for the heading “Provisions Applying to Disclosure Statements and Advertisements”, as from 24 March 1995, by section 9 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

89 Offence to fail to publish required information in disclosure statement

- (1) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to publish information that it is required to publish in a disclosure statement under section 81.
- (2) The penalty for an offence against this section is set out in section 156AC.

Sections 89 to 92 were substituted, as from 24 March 1995, by section 9 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 89 was substituted, as from 21 August 2003, by section 23 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

89A Offence to publish false or misleading disclosure statements

- (1) If a disclosure statement that includes information that is false or misleading is published by a registered bank, all of the following persons commit an offence:

- (a) the registered bank; and
 - (b) every director of the registered bank who signed the disclosure statement or on whose behalf the disclosure statement was signed; and
 - (c) in the case of an overseas incorporated registered bank, the New Zealand chief executive officer who signed the disclosure statement or on whose behalf the disclosure statement was signed.
- (2) It is a defence to a prosecution for an offence against this section if—
- (a) the defendant proves that the information was immaterial; or
 - (b) in the case of a defendant who is director of a registered bank or a New Zealand chief executive officer of an overseas incorporated registered bank, that defendant proves that he or she had reasonable grounds to believe, and believed, up to the publication of the disclosure statement, that the information was true.
- (3) The penalty for an offence against this section is set out in section 156AC.

Sections 89A to 89C were inserted, as from 21 August 2003, by section 23 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

89B Offence to fail to make most recent disclosure statement publicly available

- (1) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to make its most recent disclosure statement publicly available in the manner set out in an Order in Council made under section 81.
- (2) The penalty for an offence against this section is set out in section 156AB.

Sections 89A to 89C were inserted, as from 21 August 2003, by section 23 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

89C Other offences in relation to disclosure statements

- (1) A registered bank commits an offence if the registered bank fails to comply with a requirement of the Bank under section 83 for the registered bank to—

- (a) publish a disclosure statement that does not contain false or misleading information; or
 - (b) publish a disclosure statement that contains information that was previously omitted; or
 - (c) take the corrective action specified by the Bank in a notice given under that section.
- (2) The penalty for an offence against this section is set out in section 156AC.

Sections 89A to 89C were inserted, as from 21 August 2003, by section 23 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

90 Civil liability

Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement, namely,—

- (a) the registered bank; and
- (b) every person holding office as a director of the registered bank at the time of the publication of the disclosure statement; and
- (c) the New Zealand chief executive officer of an overseas incorporated registered bank at the time of the publication of the disclosure statement.

Compare: 1978 No 103 s 56(1); 1982 No 147 s 27

Sections 89 to 92 were substituted, as from 24 March 1995, by section 9 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Paragraphs (a) and (b) were substituted, as from 21 August 2003, by section 24 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Paragraph (c) was inserted, as from 21 August 2003, by section 24 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

91 Defences

A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that—

- (a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of

the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or

- (b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or
- (c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

Compare: 1978 No 103 s 56(3)(a)-(c); 1982 No 147 s 27

Sections 89 to 92 were substituted, as from 24 March 1995, by section 9 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

92 Fair Trading Act 1986 not affected

Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986.

Sections 89 to 92 were substituted, as from 24 March 1995, by section 9 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Supply of information

93 Supply of information by registered banks for purposes of prudential supervision

- (1) For the purposes of this Part, the Bank may, by notice in writing to any registered bank or by notice in the *Gazette* that applies to any specified class of registered banks, require the registered bank or, as the case may be, registered banks of that class to supply to the Bank any information, data, or forecasts about—
 - (a) the corporate matters of the registered bank:
 - (b) the financial matters of the registered bank:
 - (c) the prudential matters of the registered bank:

- (d) any other matters relating to the business, operation, or management of the registered bank.
- (2) A registered bank may be required to supply information, data, or forecasts—
 - (a) relating to business carried on by the registered bank in New Zealand or elsewhere (whether that business is carried on as principal, broker, agent, or intermediary); and
 - (b) in a consolidated form (if specified by the Bank).
- (3) A notice may specify—
 - (a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and
 - (b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.
- (4) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.
- (5) A registered bank commits an offence if, without lawful justification or excuse, the registered bank—
 - (a) fails to comply in any respect with any requirements of the Bank under this section; or
 - (b) supplies information or data that the registered bank is required to supply under this section that is false or misleading in a material particular.
- (6) The penalty for an offence against this section is set out in section 156AB.

Section 93 was substituted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

93A Scope of notice under section 93

The Bank may, by notice under section 93, require a registered bank or a specified class of registered banks to supply, without limitation, information, data, or forecasts in relation to—

- (a) any associated person of a registered bank; or
- (b) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of a registered bank has a substantial interest.

Sections 93A to 93C were inserted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

93B Certain persons may be required to supply information to registered banks

- (1) A person referred to in section 93A(a) or (b) must, on being required by a registered bank to do so, supply the registered bank with information, data, or forecasts relating to that person in order to enable the registered bank to comply with a notice under section 93.
- (2) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- (3) The penalty for an offence against this section is set out in section 156AB.

Sections 93A to 93C were inserted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

93C Supply of information by other persons for purposes of prudential supervision

- (1) If the Bank has reasonable grounds to believe that a person has information, data, or forecasts that the Bank could require a registered bank or a class of registered banks to supply under section 93, it may, by notice in writing to that person, require that person to supply the information, data, or forecasts to the Bank.
- (2) A notice may specify—
 - (a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and
 - (b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.
- (3) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.
- (4) A person commits an offence if, without lawful justification or excuse, the person—
 - (a) fails to comply with any requirements of the Bank under this section; or

- (b) supplies information or data that the person is required to supply under this section that is false or misleading in a material particular.
- (5) The penalty for an offence against this section is set out in section 156AB.

Sections 93A to 93C were inserted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

94 Requirement that information, data, or forecasts be audited

- (1) The Bank may, by notice in writing, require a registered bank or other person to obtain an audit, by an auditor approved by the Bank, of any information, data, or forecasts that the registered bank or other person, as the case may be, is required to supply under section 93 or section 93C.
- (2) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- (3) The penalty for an offence against this section is set out in section 156AA.

Sections 94 and 95 were substituted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

95 Bank may require report relating to registered banks, etc

- (1) The Bank may, by notice in writing to a registered bank, require that registered bank to supply the Bank with a report or series of reports, prepared by a person approved by the Bank, on—
 - (a) the corporate matters of the registered bank:
 - (b) the financial matters of the registered bank:
 - (c) the prudential matters of the registered bank:
 - (d) any other matters relating to the business, operation, or management of the registered bank:
 - (e) any of the matters referred to in paragraphs (a) to (d) in relation to—
 - (i) any associated person of the registered bank:
 - (ii) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding com-

pany of the registered bank has a substantial interest.

- (2) A person referred to in subsection (1)(e)(i) or (e)(ii) must, if required to do so by a registered bank, supply information relating to that person in order to enable the registered bank to comply with a notice under this section.
- (3) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- (4) The penalty for an offence against this section is set out in section 156AC.

Sections 94 and 95 were substituted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

95A Bank may require report under section 95 to be published

- (1) The Bank may, by notice in writing to a registered bank, require that the report or series of reports, as the case may be, that has been prepared under section 95 in relation to the registered bank be published by that registered bank in the form specified in the notice.
- (2) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to comply with this section.
- (3) The penalty for an offence against this section is set out in section 156AC.

Section 95A was inserted, as from 21 August 2003, by section 25 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

96 Disclosure of information to Bank by auditors

Every person who holds, or at any time has held, office as required by any enactment, as an auditor of a registered bank or an associated person of a registered bank, shall disclose to the Bank information relating to the affairs of that registered bank or associated person obtained in the course of holding that office if, in the opinion of that person,—

- (a) The registered bank or associated person is insolvent or is likely to become insolvent or is in serious financial difficulties; and

- (b) The disclosure of that information is likely to assist, or be relevant to, the exercise by the Bank of its powers under this Part of this Act.

Compare: 1964 No 134 s 38M(1); 1986 No 131 s 10; 1989 No 11 s 13

Section 96 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or an associated person of a registered bank” after the words “registered bank” in the first place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Section 96 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person” after the words “registered bank” in the second and third places where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

97 Auditor to inform of intention to disclose

Every auditor shall, before disclosing any information to the Bank under section 96 of this Act, take reasonable steps to inform the registered bank or associated person of the intention to disclose the information and the nature of the information.

Compare: 1964 No 134 s 38M(5); 1986 No 131 s 10

The heading to section 97 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the words “registered bank”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Section 97 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person” after the words “registered bank”. *See* sections 49 to 52 of that Act as to the transitional provisions.

98 Protection of auditors

- (1) No civil, criminal, or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Bank pursuant to section 96 of this Act.
- (2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any auditor shall make any order against, or do any act in relation to, that person in respect of such disclosure.
- (3) No information received by the Bank pursuant to section 96 of this Act shall be admissible in evidence in any proceedings against the auditor concerned.

- (4) Nothing in subsection (3) of this section shall limit the admissibility of any information obtained in any other way.

Compare: 1964 No 134 s 38M(2); 1986 No 131 s 10; 1989 No 11 s 15

*Access to information by home country
supervisor*

The heading “Access to information by home country supervisor” was inserted, as from 21 August 2003, by section 26 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

98A Access to information by home country supervisor

- (1) This section applies to—
- (a) a registered bank; and
 - (b) any member of the registered bank’s banking group (being a member that has a physical presence in New Zealand).
- (2) For the purpose of the exercise by a home country supervisor of its supervisory functions, the Bank may authorise a home country supervisor to—
- (a) conduct an inspection of any person to whom this section applies; or
 - (b) require any person to whom this section applies to supply to the home country supervisor any information, data, or forecasts relating to that person.
- (3) The information, data, or forecasts that a home country supervisor may be authorised to obtain may include, without limitation, information about the affairs of a particular customer or client of a person to whom this section applies.
- (4) The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information, data, or forecasts obtained or required by the home country supervisor.
- (5) 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 at any time.
- (6) The Bank must give notice in writing to a person to whom this section applies if the Bank—

- (a) grants an authorisation in relation to that person; or
 - (b) varies, revokes, or amends that authorisation.
- (7) This section has effect despite anything to the contrary in any other enactment or rule of law.
- (8) For the purposes of this section, a member of a registered bank's banking group has a physical presence in New Zealand if that member—
 - (a) has an office in New Zealand; or
 - (b) has an agent in New Zealand.

Sections 98A and 98B were inserted, as from 21 August 2003, by section 26 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

98B Duties of person on receipt of notice under section 98A

- (1) A person to whom section 98A applies must, on receipt of a notice from the Bank under that section, comply with that notice by, as the case may be,—
 - (a) permitting the home country supervisor to conduct an inspection of that person; or
 - (b) supplying the home country supervisor with the required information, data, or forecasts within the time, and at the place, specified in the notice.
- (2) A person commits an offence if, without lawful justification or excuse, the person—
 - (a) fails to comply in any respect with any requirements notified by the Bank under this section; or
 - (b) supplies any information or data that the person is required to supply under this section that is false or misleading in a material particular.
- (3) The penalty for an offence against this section is set out in section 156AA.

Sections 98A and 98B were inserted, as from 21 August 2003, by section 26 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Powers to obtain information and documents

99 Powers to obtain information and documents

- (1) This section applies if the Bank has reasonable cause to believe—

- (a) that any information or data published in a disclosure statement by a registered bank under section 81 or section 83 is false or misleading in a material particular; or
 - (b) that a registered bank has failed to publish information or data that it is required to publish in a disclosure statement under section 81 or section 83; or
 - (c) that any information or data supplied to the Bank by a registered bank under section 93 is false or misleading in a material particular; or
 - (d) that any information or data supplied by a person to a registered bank under section 93B or to the Bank under section 93C, as the case may be, is false or misleading in a material particular; or
 - (e) that a registered bank or a person, as the case may be, has failed to comply with any requirement to supply information, data, or forecasts under section 93 or section 93B or section 93C; or
 - (f) that a registered bank has failed to comply with section 95.
- (2) If this section applies, the Bank may,—
- (a) by notice in writing to the registered bank or person, require that registered bank or person to supply to the Bank, within the time specified in the notice, the information or data specified in the notice; or
 - (b) appoint, in writing, any suitably qualified person to enter and search any premises and inspect, remove, and take copies of any documents in the possession, custody, or control of any person and, if necessary, require the reproduction in usable form of any information recorded or stored in those documents.
- (3) A person commits an offence if, without lawful justification or excuse, the person hinders, obstructs, or delays, in the conduct of an inspection under this section, any person duly authorised to make that inspection.
- (4) A registered bank or person commits an offence if, without lawful justification or excuse, the registered bank or person—
- (a) fails to comply with any requirement of the Bank under subsection (2)(a); or

- (b) supplies any information or data that is required to be supplied under subsection (2)(a) that is false or misleading in a material particular.
- (5) The penalty for an offence against this section is set out,—
 - (a) in the case of an offence against subsection (3), in section 156AB; and
 - (b) in the case of an offence against subsection (4), in section 156AC.

Section 99 was substituted, as from 21 August 2003, by section 27 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

100 Requirements on entering and searching premises

- (1) No person appointed pursuant to section 99(2)(b) of this Act shall enter and search any premises, or inspect, remove, or take copies of any documents, or extracts from documents, in the possession of, or under the control of, any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless—
 - (a) The occupier of the premises, or the person who has possession of the documents, agrees; or
 - (b) That person obtains a warrant under section 106 of this Act.
- (2) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 of this Act shall, on first entering those premises, and, if requested, at any subsequent time, produce—
 - (a) Evidence of that person's authority to enter the premises; and
 - (b) Evidence of that person's identity.

Compare: 1964 No 134 s 38N(2), (7); 1986 No 131 s 10; 1989 No 11 s 18

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression "section 99(2)(b)" for the expression "section 99(1)(e)". *See* sections 49 to 52 of that Act as to the transitional provisions.

Investigations

101 Investigation of affairs of registered bank

Where the Bank is satisfied that it is necessary or desirable for the purpose of determining whether or not to exercise the

powers conferred under section 113 or section 117 of this Act that an investigation of the affairs of any registered bank or associated person of a registered bank should be carried out, the Bank may appoint, in writing, any person to carry out an investigation of the affairs of that registered bank or associated person of that registered bank.

Compare: 1964 No 134 s 380(1); 1986 No 131 s 10; 1989 No 11 s 19

Section 101 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “113” for the expression “111”. See sections 49 to 52 of that Act as to the transitional provisions.

Section 101 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person of a registered bank” after the words “registered bank” in the first place where they occur. See sections 49 to 52 of that Act as to the transitional provisions.

Section 101 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person of that registered bank”. See sections 49 to 52 of that Act as to the transitional provisions.

102 Powers of person appointed to carry out investigation

- (1) Any person appointed under section 101 of this Act may, for the purposes of carrying out an investigation of the affairs of a registered bank or associated person of a registered bank,—
- (a) By notice in writing, require that registered bank or associated person, or any officer or employee of that registered bank or associated person, or any other person, to—
- (i) Supply any information or data relating to the business, operation, and management of the registered bank or associated person:
- (ii) Produce for inspection any documents of, or relating to, the business, operation, and management of that registered bank or associated person in the custody, or under the control, of that registered bank or associated person, officer, employee, or person:
- (iii) Where necessary, reproduce in usable form any information recorded or stored in such documents:

- (b) Take copies of any documents produced for inspection under paragraph (a) of this subsection:
 - (c) Require any officer or employee of that registered bank or associated person, or any other person, to answer any question relating to the business, operation, and management of that registered bank or associated person.
- (1A) Any questioning under subsection (1)(c) may be carried out by any person appointed under section 101, or a barrister or solicitor acting on behalf of that person, who may require the person who is subject to the questioning to take an oath or make an affirmation.
- (2) Subject to section 104 of this Act, any person appointed under section 101 of this Act may, for the purposes of carrying out an investigation of the affairs of the registered bank or associated person, at any time,—
- (a) Enter and search any premises:
 - (b) Inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that registered bank or associated person in the possession, or under the control, of any person:
 - (c) If necessary, require any person to reproduce in usable form any information recorded or stored in those documents.

Compare: 1964 No 134 s 380(2), (4); 1986 No 131 s 10; 1989 No 11 s 21

Section 102 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person of a registered bank” after the words “registered bank” in the first place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Section 102 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person” after the words “registered bank” in each subsequent place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

103 Offences in relation to investigations

- (1) Every person commits an offence against this Act who, without lawful justification or excuse,—
- (a) Hinders, obstructs, or delays any person appointed to carry out an investigation under section 101 of this Act in carrying out that investigation; or
 - (b) Refuses to answer any question put to him or her under section 102 of this Act; or
 - (c) Supplies any information, or provides an answer to any question, required to be supplied or provided pursuant to section 102 of this Act which is false or misleading in a material particular.
- (2) Every registered bank or associated person of the registered bank commits an offence against this Act if, without lawful justification or excuse,—
- (a) It fails to comply with any requirement of a person appointed to carry out an investigation under section 101 of this Act; or
 - (b) It supplies any information or data, or provides an answer to any question, required to be supplied or provided pursuant to section 102(1) of this Act which is false or misleading in a material particular.
- (3) The penalty for an offence against this section is set out in section 156AC.

Compare: 1964 No 134 s 380(11), (12), (13); 1986 No 131 s 10; 1989 No 11 s 20

Subsection (1)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the words “by that person”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(c) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “, or provides an answer to any question, required to be supplied or provided” for the words “required to be supplied”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or associated person of the registered bank” after the words “registered bank”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “, or provides an answer to any question, required to be supplied or pro-

vided” for the words “required to be supplied”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

104 Requirements to be complied with by person carrying out investigation

- (1) Any person who exercises any powers conferred by section 102(1) of this Act shall, if requested, produce the instrument of that person’s appointment under section 101 of this Act.
- (2) No person who exercises any powers conferred by section 102(2) of this Act shall enter and search any premises, or inspect, remove, and take copies of any documents or extracts from documents, or require the reproduction in usable form of any information recorded or stored in documents, unless—
 - (a) The occupier of the premises, or the person who has possession of the documents, agrees; or
 - (b) That person obtains a warrant under section 106 of this Act.
- (3) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 of this Act shall, on first entering those premises and, if requested, at any subsequent time, produce—
 - (a) Evidence of that person’s authority to enter the premises; and
 - (b) Evidence of that person’s identity.

Compare: 1964 No 134 s 380(3), (5), (9); 1986 No 131 s 10; 1989 No 11 s 22

Miscellaneous provisions

105 Confidentiality of information

- (1) This section applies to—
 - (a) Information, data, and forecasts supplied or disclosed to, or obtained by,—
 - (i) The Bank;
 - (ii) A person appointed under section 99(2)(b), section 101, or section 119 of this Act—
under, or for the purposes of, or in connection with the exercise of powers conferred by, this Part of this Act:

- (b) Information and data derived from or based upon information, data, and forecasts referred to in paragraph (a) of this subsection:
 - (c) Information relating to the exercise, or possible exercise, of the powers conferred by this Part of this Act.
- (2) Information, data, and forecasts to which this section applies shall not be published or disclosed by the Bank, any officer or employee of the Bank, or a person appointed under section 99(2)(b), section 101, or section 119 of this Act, except—
 - (a) With the consent of the person to whom the information relates:
 - (b) To the extent that the information is available to the public under any Act, other than the Official Information Act 1982, or is otherwise publicly available information:
 - (c) In statistical or summary form arranged in such a manner as to prevent any information published or disclosed from being identified by any person as relating to any particular person:
 - (d) For the purposes of, or in connection with, the exercise of powers conferred by this Part of this Act:
 - (e) In connection with any proceedings for an offence against this Act:
 - (f) To any central bank, authority, or body in any other country which exercises functions corresponding to or similar to those conferred on the Bank under this Part of this Act for the purposes of the exercise by that central bank, authority, or body of those functions:
 - (g) To any person whom the Bank is satisfied has a proper interest in receiving such information.
- (3) No information, data, or forecasts shall be published or disclosed pursuant to paragraph (f) or paragraph (g) of subsection (2) of this section unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information, data, or forecasts published or disclosed.
- (4) No officer or employee of the Bank and no person appointed under section 99(2)(b), section 101, or section 119 of this Act shall use any information, data, or forecasts to which this section applies for a purpose not connected with the purpose for

which such information, data, or forecasts was, or were, supplied, disclosed, or obtained.

- (5) No person to whom any information, data, or forecasts to which this section applies is or are published or disclosed pursuant to subsection (2)(d) of this section shall publish, disclose, or use such information, data, or forecasts except—
 - (a) For the purposes of, or in connection with the exercise of powers conferred by, this Part of this Act; and
 - (b) In accordance with such conditions as may be specified by the Bank.
- (6) No person to whom any information, data, or forecasts to which this section applies is or are published or disclosed pursuant to subsection (2)(a) or subsection (2)(g) of this section, shall publish, disclose, or use such information, data, or forecasts unless the publication, disclosure, or use is—
 - (a) Authorised by the Bank; or
 - (b) Necessary or desirable in connection with the exercise of any function or power conferred by any enactment.
- (7) A person referred to in subsection (7A) commits an offence if the person contravenes this section.
- (7A) The persons are—
 - (a) any officer or employee of the Bank; or
 - (b) a person appointed under section 99(2)(b), section 101, or section 119.
- (7B) The penalty for an offence against this section is set out in section 156AA.
- (8) Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information, data, and forecasts to which this section applies whether or not such information, data, and forecasts has or have been published or disclosed to any person pursuant to this section.

Compare: 1964 No 134 s 38P; 1986 No 131 s 10; 1989 No 11 s 23

Section 105 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “section 99(2)(b), section 101, or section 119” for the words “section 99(1)(e) or section 101” in each place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “or is otherwise publicly available information” for the words “or in

a public document”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (7) was substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsections (7A) (7B) were inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

106 Procedure for obtaining warrants

- (1) A Judge of the High Court who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing—
 - (aaa) that any information or data published in a disclosure statement by a registered bank under section 81 or section 83 is false or misleading in a material particular; or
 - (aa) that a registered bank has failed to publish information that it is required to publish in a disclosure statement under section 81 or section 83; or
 - (a) That any information or data supplied to the Bank by a registered bank pursuant to section 93 of this Act is false or misleading in a material particular; or
 - (b) That a registered bank has failed to comply with any requirement to supply information, data, or forecasts pursuant to section 93 of this Act; or
 - (ba) that any information or data supplied by a person to a registered bank under section 93B or to the Bank under section 93C, as the case may be, is false or misleading in a material particular; or
 - (bb) that a person has failed to comply with any requirement to supply information, data, or forecasts to a registered bank under section 93B, or to the Bank under section 93C as the case may be; or
 - (c) That a registered bank has failed to comply with section 95 of this Act—may issue a warrant, in terms of section 107 of this Act, to a person appointed pursuant to section 99(2)(b) of this Act.
- (2) A Judge of the High Court who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that it is necessary for the purpose of determining

whether to exercise the powers conferred under section 113 or section 117 of this Act that an investigation of the affairs of a registered bank should be carried out, may issue a warrant, in terms of section 107 of this Act, to a person appointed under section 101 of this Act.

- (3) A warrant issued under subsection (1) must identify the paragraph in that subsection under which it has been issued.

Compare: 1964 No 134 ss 38N(3), (5), 380(6); 1986 No 131 s 10; 1989 No 11 s 24

Subsection (1) was amended, as from 21 August 2003, by section 28(3) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “99(2)(b)” for the expression “99(1)(e)”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(aaa) and (1)(aa) was inserted, as from 21 August 2003, by section 28(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(ba) and (1)(bb) was inserted, as from 21 August 2003, by section 28(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 21 August 2003, by section 28(4) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “113” for the expression “111”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 21 August 2003, by section 28(5) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

107 Effect of warrant

- (1) Every warrant issued under section 106 of this Act authorises the person named in it, at any time and, if necessary, by force, to—
- (a) Enter and search the premises named in it:
 - (b) Inspect, remove, and take copies of documents or extracts from documents relating to the business, operation and management of the registered bank in the possession, or under the control, of any person:
 - (c) Where necessary, require any information recorded or stored in those documents to be reproduced in usable form.
- (2) The warrant shall continue in force for a period of 1 month or until the purpose for which it was granted has been satisfied, whichever is the lesser.

- (3) Every person named in the warrant shall, as soon as practicable after removing any documents or extracts from documents from any premises, supply a copy of the documents or extracts to the person from whom the documents or extracts were removed.

Compare: 1964 No 134 ss 38N(4), (6), (8), 380(7), (8), (10)

108 Effect of proceedings

- (1) Where any person commences any proceedings in any court in respect of the exercise of any powers conferred by section 99 or section 101 or section 102 of this Act, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be, exercised as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under those sections by reason of those proceedings.

- (2) This section shall apply notwithstanding the provisions of any other Act or any rule of law.

Compare: 1964 No 134 ss 38N(11), 380(14); 1986 No 131 s 10; 1989 No 11 s 26

109 Effect of final decision that exercise of powers under section 99 unlawful

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 99 of this Act 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 shall ensure that forthwith after the decision of the Court is given—
- (i) Any information and data supplied by the registered bank pursuant to subsection (2)(a) of that section is destroyed:
 - (ii) Any documents or extracts from documents obtained pursuant to an inspection made under subsection (2)(b) of that section are returned to the person previously having possession of those documents or previously having them under his

or her control and any copies of such documents or extracts are destroyed:

- (iii) Any information derived from or based upon any such information and data or documents or extracts is destroyed:
- (b) No information and data supplied by the registered bank pursuant to subsection (2)(a) of that section, and no documents or extracts from documents obtained pursuant to an inspection made under subsection (2)(b) of that section, shall be—
 - (i) Admissible in evidence in any proceedings:
 - (ii) Used in connection with the exercise of any power conferred by section 113 or section 117 of this Act.

Compare: 1964 No 134 s 38N(12); 1986 No 131 s 10; 1989 No 11 s 27

Section 109 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “subsection (2)(a)” for the expression “subsection (1)(c)” in both place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Section 109 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “subsection (2)(b)” for the expression “subsection (1)(d)” in both place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Paragraph (b)(ii) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “113” for the expression “111”. *See* sections 49 to 52 of that Act as to the transitional provisions.

110 Effect of final decision that exercise of powers under section 101 or section 102 unlawful

In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 101 or section 102 of this Act that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful,—

- (a) The Bank shall ensure that forthwith after the decision of the Court is given—
 - (i) Any information or data obtained pursuant to section 102(1)(a) of this Act is destroyed:

- (ii) Any documents produced for inspection pursuant to section 102(1)(a) of this Act are returned to the person previously having possession of the documents or previously having the documents under his or her control and any copies of such documents or extracts from documents are destroyed:
- (iii) Any documents or extracts from documents obtained pursuant to an inspection made under section 102(2) of this Act are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of such documents or extracts from documents are destroyed:
- (iv) Any information derived from or based upon any such information, documents, or extracts is destroyed:
- (b) No information or data obtained or documents produced for inspection pursuant to section 102(1)(a) of this Act and no documents or extracts from documents obtained pursuant to an inspection made under section 102(2) of this Act shall be—
 - (i) Admissible in evidence in any proceedings:
 - (ii) Used in connection with the exercise of any power conferred by section 113 or section 117 of this Act.

Compare: 1964 No 134 s 380(15); 1986 No 131 s 10; 1989 No 11 s 28

Paragraph (b)(ii) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “113” for the expression “111”. See sections 49 to 52 of that Act as to the transitional provisions.

Reserve Bank may give directions

The heading “Reserve Bank may give directions” was substituted for the heading “Registered banks may be required to consult with Reserve Bank”, as from 21 August 2003, by section 29 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

111 Bank may require registered bank to consult

[Repealed]

Sections 111 and 112 were repealed, as from 21 August 2003, by section 29 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

112 Bank may give advice and assistance

[Repealed]

Sections 111 and 112 were repealed, as from 21 August 2003, by section 29 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

113 Bank may give directions

- (1) The Bank may give a registered bank or an associated person of a registered bank a direction, in writing, if it has reasonable grounds to believe that—
 - (a) the registered bank or associated person is insolvent or is likely to become insolvent; or
 - (b) the registered bank or associated person is about to suspend payment or is unable to meet its obligations as and when they fall due; or
 - (c) the affairs of the registered bank or associated person are being conducted in a manner prejudicial to the soundness of the financial system; or
 - (d) the circumstances of the registered bank or associated person are such as to be prejudicial to the soundness of the financial system; or
 - (e) the business of the registered bank has not been, or is not being, conducted in a prudent manner; or
 - (f) any of the following persons has failed to comply with any requirement imposed by or under this Act or regulations made under this Act:
 - (i) the registered bank;
 - (ii) a director of the registered bank;
 - (iii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer; or
 - (g) any of the following persons has been convicted of an offence against this Act:
 - (i) the registered bank;
 - (ii) a director of the registered bank;

- (iii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer; or
 - (h) the registered bank has failed to comply with a condition of its registration.
- (2) The Bank must obtain the consent of the Minister before giving a direction under this section.
- (3) A direction given under this section must state the grounds on which it is given.
- (4) The Bank may, with the consent of the Minister,—
 - (a) amend or modify a direction; or
 - (b) replace a direction with another direction; or
 - (c) revoke a direction.
- (5) To avoid doubt, the Bank may exercise the power conferred by subsection (1) by giving a direction to a registered bank in respect of an associated person of that registered bank, and vice versa.

Section 113 was substituted, as from 21 August 2003, by section 30 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

113A Scope of directions

A direction given under section 113 may require a registered bank or an associated person of a registered bank to—

- (a) consult with the Bank immediately, and from time to time, about the circumstances of the registered bank or of an associated person of the registered bank and the methods of resolving any difficulties facing the registered bank or the associated person; or
- (b) carry on business, or any part of its business, in accordance with the direction; or
- (c) cease to carry on its business, or any part of its business, in accordance with the direction; or
- (d) ensure that any officer or employee of the registered bank 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; or
- (e) remove or replace any of the directors of an associated person of the registered bank; or

- (f) remove or replace its auditor or appoint an auditor approved by the Bank; or
- (g) take the action that is specified in the direction to address a breach of any condition of its registration; or
- (h) take the action that is specified in the direction to address any circumstances of financial difficulties; or
- (i) take any other action that may be specified in the direction.

Sections 113A and 113B were inserted, as from 21 August 2003, by section 30 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

113B Power to remove, replace, or appoint directors

- (1) This section applies if the Bank has reasonable grounds to believe that—
 - (a) any of the circumstances referred to in section 113(1) exists; and
 - (b) it is necessary to remove, replace, or appoint a director of a registered bank or of an associated person of a registered bank.
- (2) If this section applies, the Bank may—
 - (a) remove or replace a director of any registered bank or of an associated person of any registered bank; or
 - (b) appoint any person as a director of any registered bank or of an associated person of any registered bank.
- (3) The Bank must—
 - (a) obtain the consent of the Minister before exercising the power conferred by subsection (2); and
 - (b) exercise that power by giving notice in writing to—
 - (i) the director or the person concerned; and
 - (ii) if applicable, the Registrar of Companies.
- (4) A notice given under subsection (3)(b)(ii) is sufficient compliance with section 159 of the Companies Act 1993 as long as the notice is accompanied by the form of consent and certificate required under section 152 of that Act.
- (5) This section has effect despite any enactment, rule of law, or the terms of the constitution of, or the instrument or contract creating, a registered bank or an associated person of a registered bank.

Sections 113A and 113B were inserted, as from 21 August 2003, by section 30 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

114 Offence to contravene directions

- (1) Every person commits an offence against this Act who, being a registered bank or associated person, without lawful justification or excuse, contravenes, or fails to comply with, a direction under section 113 of this Act.
- (2) Every person commits an offence against this Act who, being an officer or employee of a registered bank or of an associated person, without lawful justification or excuse, obstructs, hinders or prevents that registered bank or associated person giving effect to any direction given under section 113 of this Act.
- (3) The penalty for an offence against this section is set out in section 156AC.

Compare: 1964 No 134 s 38Q(11), (12); 1986 No 134 s 10; 1989 No 11 s 35

Subsection (3) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

115 Offence to disclose giving of direction

- (1) Subject to subsections (2) and (3) of this section, every person commits an offence against this Act who discloses that a direction has been given under section 113 or that a notice has been given under section 113B.
- (2) Nothing in subsection (1) of this section applies to the disclosure or publication of the fact that a direction or notice has been given where the disclosure or publication is made—
 - (a) To any professional or financial adviser of the registered bank or associated person to which the direction or notice relates;
 - (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 registered bank or associated person;
 - (c) By the Bank or with the written consent of the Bank,—
 - (i) To the public; or

- (ii) To any person who has a proper interest in knowing that the direction or notice has been given.
- (3) Nothing in subsection (1) of this section applies to the disclosure or publication of the fact that a direction has been given requiring the actions set out in section 113A(d) or section 113A(e) or section 113A(f) for the purpose of giving effect to that direction.
- (4) The penalty for an offence against this section is set out in section 156AA.

Compare: 1964 No 134 s 38Q(14), (15); 1986 No 131 s 10; 1989 No 11 s 36

The heading to section 115 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the word “direction” for the word “notice”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “that a direction has been given under section 113 or that a notice has been given under section 113B” for the words “that a notice has been given under section 111 of this Act or that a direction has been given under section 113 of this Act”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “direction or notice” for the words “notice or direction” in each place where they occur. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “requiring the actions set out in section 113A(d) or section 113A(e) or section 113A(f)” for the words “under subsection 1(c) or (d) or subsection 2(c) or (d) of section 113 of this Act”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

116 Miscellaneous provisions with respect to directions and dispositions

- (1) A direction given under section 113 is taken to have been given on delivery to the head office, registered office, principal place of business in New Zealand, or address for service of the registered bank or associated person of the registered bank.
- (2) If the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in section 113(1) exist, it may, with the consent of the Minister, by notice in writing to the parties,

- approve any sale or other disposition of the whole or part of the capital or business undertaking of the registered bank or associated person of the registered bank specified in the notice.
- (3) If the Bank grants an approval under subsection (2), the provisions of any enactment 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.
- (4) For the purposes of this section, **address for service**, in relation to a registered bank, means the address for service specified in a disclosure statement published in accordance with section 81.

Section 116 was substituted, as from 21 August 2003, by section 31 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Statutory management of registered banks

117 Statutory management of registered banks and associated persons

- (1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—
- (a) Declare that—
- (i) Any registered bank:
- (ii) Any associated person of a registered bank—
is subject to statutory management; and
- (b) Appoint one or more persons as statutory manager or statutory managers of that registered bank or associated person for a specified period.
- (1A) If any question arises as to whether, on the date on which a statutory manager was appointed, an act was done or a transaction was entered into or effected before or after the appointment, that act or transaction must, in the absence of proof to the contrary, be treated as having been done or entered into or effected, as the case may be, after the appointment of the statutory manager.
- (2) If an Order in Council is made under subsection (1), every subsidiary of a registered bank declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, is subject to statutory man-

agement and the appointment of a statutory manager for the specified period in respect of that registered bank also applies to those subsidiaries.

- (2A) If a registered bank acquires a subsidiary after it has been declared to be subject to statutory management under subsection (1), that subsidiary is not subject to statutory management unless a further Order in Council is made declaring that subsidiary to be subject to statutory management.
- (3) Where a registered bank or an associated person of a registered bank that is declared to be subject to statutory management or a subsidiary of a registered bank that becomes subject to statutory management under subsection (2) of this section, is incorporated outside New Zealand or is an unincorporated body having its head office or principal place of business outside New Zealand, the provisions of this Part of this Act relating to statutory management shall apply to the property, rights, assets and liabilities relating to its New Zealand business.
- (4) Every Order in Council made under subsection (1) must specify the date on which, and the time at which, the Order in Council comes into force.
- (5) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made.
- (6) A person appointed under subsection (1)(b) has all the rights and powers conferred, and all the duties imposed, on a person appointed under section 101 and, without limitation, the following provisions apply, with any necessary modifications, as if that person were appointed under section 101:
 - (a) section 102 (which relates to powers to carry out an investigation of the affairs of a registered bank); and
 - (b) section 103 (which sets out offences in relation to investigations); and
 - (c) section 104 (which sets out the requirements that must be complied with by a person carrying out an investigation).

Compare: 1964 No 134 s 38R(2), (3); 1986 No 131 s 10; 1989 No 11 s 38

Subsection (1)(b) was amended, as from 21 August 2003, by section 32(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “for a specified period”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 21 August 2003, by section 32(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 21 August 2003, by section 32(3) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 21 August 2003, by section 32(3) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsections (4) and (5) were inserted, as from 26 April 1999, by section 2 Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Subsection (6) was inserted, as from 21 August 2003, by section 32(4) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

118 Grounds on which registered bank may be declared to be subject to statutory management

- (1) The Bank must not make a recommendation under section 117 unless—
 - (a) it is satisfied on reasonable grounds that 1 or more of the circumstances listed in section 113(1)(a) to (e) exist; or
 - (b) a registered bank or an associated person of a registered bank has failed to comply with a direction given under section 113.
- (2) The Bank shall, as soon as practicable after the making of an Order in Council declaring a registered bank or associated person to be subject to statutory management, give written notice to the registered bank or associated person stating the grounds on which the recommendation made by the Bank was made.

Compare: 1964 No 134 s 38R(4), (6); 1986 No 131 s 10; 1989 No 11 s 39

Subsection (1) was substituted, as from 21 August 2003, by section 33 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

119 Advisory committee

- (1) Where an Order in Council is made under section 117 of this Act declaring a registered bank or an associated person to be subject to statutory management, the Minister may, by notice in writing to the statutory manager of that registered bank or associated person, on the recommendation of the Bank, appoint the persons specified in the recommendation as an advisory committee.

- (2) The functions of an advisory committee shall be—
 - (a) To advise the statutory manager on the conduct of the statutory management, including the exercise of the powers conferred by this Part of this Act:
 - (b) To do such other things as may be specified by the Minister, from time to time, by notice in the *Gazette*.
- (3) The members of an advisory committee shall be appointed for such period as is specified in the notice of appointment.
- (4) The Minister may, by notice in writing, on the recommendation of the Bank, extend the term of appointment of a member of an advisory committee.
- (5) The Minister may, by notice in writing, on the recommendation of the Bank, appoint a person to be an additional member of an advisory committee.
- (6) The Minister may terminate the appointment of a member of an advisory committee for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.
- (7) A member of an advisory committee may resign office by notice in writing to the Minister.
- (8) A notice under subsection (1) or subsection (5) must specify the date on which it comes into force (which date must not be earlier than the date on which the Minister signed the notice).
- (9) Every notice given under this section must be published in the *Gazette* as soon as practicable.

Compare: 1964 No 134 s 38S(1)-(8); 1986 No 131 s 10; 1989 No 11 s 60

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “in writing to the statutory manager of that registered bank or associated person” for the words “in the *Gazette*”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsections (4) and (5) were amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “in writing” for the words “in the *Gazette*”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (6) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words “inability to perform the functions of the office” for the word “disability”.

Subsections (8) and (9) were inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

120 Statutory manager to comply with directions of Bank

Subject to section 142 of this Act, every statutory manager of a registered bank shall comply with any directions given in writing by the Bank relating to the exercise of the powers of that statutory manager under this Part of this Act.

Compare: 1964 No 134 s 38U; 1986 No 131 s 10

121 Considerations affecting exercise of powers by statutory manager

- (1) In exercising the powers conferred by this Part of this Act a statutory manager of a registered bank shall have regard to—
 - (a) The need to maintain public confidence in the operation and soundness of the financial system:
 - (b) The need to avoid significant damage to the financial system:
 - (c) To the extent not inconsistent with the considerations referred to in paragraphs (a) and (b) of this subsection, the need to resolve as quickly as possible the difficulties of that registered bank:
 - (d) To the extent not inconsistent with the considerations referred to in paragraphs (a), (b) and (c) of this subsection, preserving the position of creditors and maintaining the ranking of claims of creditors:
 - (e) The advice of the Bank.
- (2) Every statutory manager shall—
 - (a) Consult with the Bank, to the extent required by the Bank, as to the exercise of those powers:
 - (b) provide the reports that the Bank may require as to the state of the affairs, business, and statutory management of the registered bank to persons specified by the Bank (including, but not limited to, the Bank) in the form and with the frequency that the Bank may require:
 - (c) provide the information that an advisory committee appointed under section 119 may reasonably require as to the affairs, business, and statutory management of the registered bank.
- (3) A statutory manager may refuse to supply information to an advisory committee under subsection (2)(c) if the Bank con-

siders that the refusal is appropriate and gives its written approval to the statutory manager accordingly.

Compare: 1964 No 134 s 38T; 1986 No 131 s 10; 1989 No 11 s 41

Subsection (2)(b) was substituted, as from 21 August 2003, by section 34(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(c) was inserted, as from 21 August 2003, by section 34(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was inserted, as from 21 August 2003, by section 34(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

121A Statutory manager to avoid actions likely to have detrimental effect

- (1) A statutory manager who has reasonable cause to believe that an action he or she proposes to take is an action that is likely to have a detrimental effect on financial system stability in Australia must—
 - (a) notify the Bank as soon as practicable; and
 - (b) obtain the Bank's written consent before taking that action.
- (2) The statutory manager is not required to comply with subsection (1) if the statutory manager is satisfied that it is not reasonably practicable to do so in the circumstances, having regard to urgency or other similar constraint.
- (3) Where the Bank receives a notification under subsection (1), it must provide details of the notification to every prescribed Australian financial authority it considers to be relevant in the circumstances before granting written consent to the statutory manager.
- (4) The Bank is not required to comply with subsection (3) if the Bank is satisfied that it is not reasonably practicable to do so in the circumstances, having regard to urgency or other similar constraint.
- (5) No performance of a function or duty or exercise of a power is invalid by reason only of a failure to comply with the provisions of this section.
- (6) A statutory manager may consult a prescribed Australian financial authority about whether an action the statutory man-

ager proposes to take is likely to have a detrimental effect on financial system stability in Australia.

Section 121A was inserted, as from 15 December 2006, by section 8 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51). See clause 2 Reserve Bank of New Zealand Amendment Act 2006 Commencement Order 2006 (SR 2006/372).

122 Moratorium

- (1) Where a registered bank is declared under section 117 of this Act to be subject to statutory management, no person shall—
 - (a) Commence or continue any action or other proceedings, including proceedings by way of counterclaim, against that registered bank:
 - (b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of that registered bank:
 - (c) Take any steps to put that registered bank into liquidation or voluntary administration:
 - (d) Foreclose, enter into possession, sell, or appoint a receiver of the property of that registered bank or property in respect of which the registered bank has an equity of redemption:
 - (e) Exercise or continue any power or rights under, or in pursuance of, any mortgage, charge, debenture, instrument, or other security over the property of that registered bank:
 - (f) Claim or recover, pursuant to any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of the registered bank:
 - (g) Determine or forfeit any tenancy, distrain for rent, re-take or re-enter any premises, or exercise or continue any power or rights under or in pursuance of any lease, against that registered bank:
 - (h) Exercise any right of set-off against that registered bank.
- (2) Notwithstanding subsection (1) of this section, an action or proceeding may be commenced or continued against a registered bank for the purpose of determining whether any right

or liability exists if the leave of the statutory manager or the High Court is first obtained.

- (3) Notwithstanding subsection (1) of this section, a statutory manager may waive the application in whole or in part of that subsection (except paragraph (c) of that subsection) to any creditor or class of creditors in respect of the whole or part of any claim of, or security held by, that creditor or class of creditors.
- (4) Subject to this Act, nothing in subsection (1) of this section affects the existence of any security over the property of any registered bank or its priority over other debts.
- (5) Nothing in subsection (1)(a), (b), and (d) to (h) limits or prevents any person from taking any of the actions specified in those paragraphs in relation to an obligation incurred or a right granted under a deed, instrument, trust, or contract entered into by a registered bank after the date on which, and the time at which, that registered bank was declared to be subject to statutory management.
- (6)
- (7) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 93A to 93I of the Insolvency Act 1967 apply,—
 - (a) Nothing in subsection (1)(h) applies to any right of set-off provided for in the netting agreement; and
 - (b) Nothing in subsection (1) limits or prevents 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 specified in the netting agreement, being an event (including the appointment of a statutory manager) occurring not later than the commencement of statutory management; or
 - (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) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that registered bank to the extent that the right is exercised to enforce, or to assist in enforcing, the due performance, by that registered bank, of obligations entered into by that registered bank under a recognised multilateral netting agreement (within the meaning of section 310A of the Companies Act 1993).
- (8) In the case of netting under the rules of a designated payment system,—
 - (a) nothing in subsection (1) limits or prevents the exercise of any rights relating to the calculation of a netted balance under those rules; and
 - (b) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that registered bank if the right that is exercised—
 - (i) is provided under the rules of the designated payment system; and
 - (ii) has been granted to secure, or to assist in securing, the due performance, by that registered bank, of obligations entered into by that registered bank under those rules.
- (9) For the purpose of subsection (8), **netted balance** and **netting** have the meanings set out in section 156L.

Compare: 1964 No 134 s 38V; 1986 No 131 s 10; 1989 No 11 s 42

Subsection (1)(c) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 122(1)(c): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Subsection (5) was amended, as from 26 April 1999, by section 3(1) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “, and the time at which,”.

Subsection (5) was substituted, as from 21 August 2003, by section 35(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (6) was amended, as from 26 April 1999, by section 3(1) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “, and the time at which,”.

Subsection (6) was repealed, as from 21 August 2003, by section 35(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (7) was inserted, as from 26 April 1999, by section 3(2) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Subsection (7)(c) was substituted, as from 21 August 2003, by section 35(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsections (8) and (9) were inserted, as from 21 August 2003, by section 35(3) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

123 Statutory manager may incorporate company under Companies Act 1993 to acquire business of branch of foreign institution

- (1) Where a registered bank, which is a branch of a body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, is declared to be subject to statutory management, the statutory manager may—
 - (a) Form and register a body corporate under the Companies Act 1993 or any other Act:
 - (b) Subscribe for or acquire, as trustee for that body corporate or unincorporated body, as the case may be, all or any of the shares of the body corporate:
 - (c) Allot or issue all or any of the shares in that body corporate as fully or partly paid, as the case may be, up to the value, after deducting the value of any liabilities vested, of any property, rights, and assets vested in that body corporate pursuant to subsection (2) of this section.
- (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, assets, and liabilities of any such branch relating to the business carried on by that branch shall vest in that body corporate on a date specified in the order and the property, rights, assets, and liabilities shall vest in that body corporate on the date specified.
- (3) Nothing in subsection (2) of this section shall reduce, extinguish, or affect any obligation or liability of a body corporate

incorporated outside New Zealand or, as the case may be, an unincorporated body having its head office or principal place of business outside New Zealand.

- (4) Every body corporate formed and registered under subsection (1) of this section shall, for the purposes of this Part of this Act, be deemed to be a registered bank subject to statutory management as if that body corporate had been declared to be subject to statutory management pursuant to section 117 of this Act, and the statutory manager of it, in its capacity as a branch, shall be the statutory manager of that body corporate as if that statutory manager had been appointed pursuant to that section and the provisions of this Part of this Act shall apply accordingly.

Compare: 1964 No 134 s 38W(1), (3)-(5); 1986 No 131 s 10

The heading to section 123 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the expression “1993” for the expression “1955”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(a) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the words “Companies Act 1993” for the words “Companies Act 1955”.

Subsection (1)(b) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16). Subsection (1)(c) was amended by inserting the words “or issue”, by the same provision.

124 Vesting of property subject to security

- (1) An order may be made under section 123 of this Act vesting any property, rights, and assets of a branch in a body corporate formed and registered pursuant to that section notwithstanding the existence, or the terms and conditions, of any security over that property, or those rights or assets, in favour of any other person.
- (2) Any property, rights or assets which are declared to vest pursuant to an order made under that section in the body corporate, being property, rights or assets subject to a security in favour of any other person, shall continue to be subject to that security.

Compare: 1964 No 134 s 38W(6), (7); 1986 No 131 s 10

125 Proof of vesting

- (1) No Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers, shall be obliged solely by reason of section 123 of this Act to change the name of any body corporate or unincorporated body referred to in that section to that of any company formed and registered pursuant to that section in those books or registers or in any document.
- (2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by the company—
- (a) Executed or purporting to be executed by the company; and
 - (b) Relating to any property held before the date specified in an Order in Council made pursuant to that section by that body corporate or unincorporated body; and
 - (c) Containing a recital that the property has become vested in the company, by virtue of the provisions of that section—
- shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Compare: 1964 No 134 s 38W(8), (9); 1986 No 131 s 10

126 Prohibition against removal of assets

- (1) Except with the consent of the statutory manager, no person shall transfer or remove from New Zealand any property or assets of a registered bank which is declared to be subject to statutory management.
- (2) A person commits an offence if the person contravenes subsection (1).
- (2A) The penalty for an offence against this section is set out in section 156AC.
- (3) Nothing in subsection (2) of this section shall prevent the issue of an injunction or the making of any order to prevent any property or assets being removed from New Zealand.

Compare: 1964 No 134 s 38X; 1986 No 131 s 10; 1989 No 11 s 43

Subsection (2) was substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

127 Statutory manager may suspend payment of money owing

- (1) The statutory manager of a registered bank may, despite the terms of any contract,—
- (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) A suspension or cancellation by a statutory manager under subsection (1) does not constitute a breach or repudiation of any contract entered into by the registered bank with any person.
- (3) Nothing in subsection (1) of this section shall authorise the suspension by the statutory manager of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, or the cancellation by the statutory manager of any obligation to provide funding, to any person where the obligation to repay the deposit, or to pay the debt, or the obligation, was incurred by the registered bank, or by the statutory manager, after the date upon which, and the time at which, the registered bank became subject to statutory management.
- (4) Nothing in subsection (1) authorises the suspension by the statutory manager of the payment of any amount that would be included in the calculation of a netted balance in accordance with section 310C of the Companies Act 1993 or section 93C of the Insolvency Act 1967 or section 156R, as the case may be. However, subsection (1) applies to the payment of the netted balance.

Compare: 1964 No 134 s 38Y; 1986 No 131 s 10; 1989 No 11 s 44

Subsections (1) and (2) were substituted, as from 21 August 2003, by section 36(1) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 26 April 1999, by section 4(1) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “, and the time at which,”.

Subsection (3) was amended, as from 21 August 2003, by section 36(2) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “, or the cancellation by the statutory manager of any obligation to

provide funding,” after the word “obligation” in the first place where it occurs. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 26 April 1999, by section 4(2) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Subsection (4) was amended, as from 21 August 2003, by section 36(3) Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or section 156R” after the words “section 93C of the Insolvency Act 1967”. *See* sections 49 to 52 of that Act as to the transitional provisions.

128 Management of registered bank to vest in statutory manager

- (1) Subject to this Part of this Act, where a registered bank is declared to be subject to statutory management, the management of that registered bank shall, on and after the date, and at and from the time, specified in the order, vest in the statutory manager.
- (2) Where a registered bank is declared to be subject to statutory management, it shall not be lawful or competent for any director, manager, or other person to be engaged in the management or conduct of its business, or to act as an officer or as the agent, or servant, of the registered bank, except with the permission of the statutory manager and so far as that permission extends.

Compare: 1964 No 134 s 38Z; 1986 No 131 s 10; 1989 No 11 s 45

Subsection (1) was amended, as from 26 April 1999, by section 5 Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “, and at and from the time,”.

129 Powers of statutory manager

- (1) Subject to this Part of this Act, a statutory manager shall have all such powers, rights, and authorities as may be necessary for the purposes of this Part of this Act.
- (2) Without limiting subsection (1) of this section, a statutory manager has, and may exercise,—
 - (a) All the powers, rights, and privileges that the registered bank has under any contract or otherwise:
 - (b) In the case of a body corporate, all the powers of the members in general meeting and the board of directors of that body corporate:

- (c) In the case of a partnership, all the powers exercisable by a partner or partners.
- (3) Without limiting subsection (1) of this section, a statutory manager has, and may exercise, all of the powers conferred on a liquidator of a company by section 269 of the Companies Act 1993 in the same manner as if the statutory manager was the liquidator of a company in liquidation under that Act, and all the provisions of that section shall apply in respect of the disclaimer of any property of the registered bank as if that property was property of a company to which that section applied.

Compare: 1964 No 134 s 38AB; 1986 No 131 s 10; 1989 No 11 s 46

Subsection (3) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

130 Statutory manager empowered to carry on business of registered bank

Subject to this Part of this Act, a statutory manager of a registered bank may carry on all or any part of the business of the registered bank and has, and may exercise, in relation to the registered bank, all such powers, rights, and authorities as may be necessary to carry on that business.

Compare: 1964 No 134 s 38AC; 1986 No 131 s 10; 1989 No 11 s 47

131 Statutory manager may pay creditors and compromise claims

Subject to this Part of this Act, a statutory manager of a registered bank shall, for the purposes of carrying on the business of the registered bank, have power to—

- (a) Pay, in whole or in part, any creditor or class of creditors of the registered bank:
- (b) Make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the registered bank:
- (c) Compromise all calls, debts and claims subsisting, or supposed to subsist, between the registered bank and any other person, and all questions relating to the assets

of the registered bank, and give a complete or partial discharge.

Compare: 1964 No 134 s 38AD; 1986 No 131 s 10; 1989 No 11 s 48

132 Sale of registered bank

- (1) Subject to this Part of this Act, the statutory manager of a registered bank may sell or otherwise dispose of the whole or any part of the business undertaking of the registered bank to such person and upon such terms and conditions as the statutory manager thinks fit.
- (2) Without limiting any other powers of the statutory manager, for the purposes of subsection (1) of this section, the statutory manager shall have power to—
 - (a) Form and register a body corporate under the Companies Act 1993 or any other Act:
 - (b) Subscribe for or acquire all or any of the shares of that body corporate:
 - (c) Transfer to that body corporate the whole or any part of the business undertaking of the registered bank:
 - (d) Allot or issue all or any of the shares in that body corporate to any person, credited as fully or partly paid, as the case may be, up to the value of the business undertaking transferred to that body corporate:
 - (e) Sell all or any of the shares, or the whole or any part of the business undertaking, of that body corporate to such person and upon such terms and conditions as the statutory manager thinks fit.
- (3) The statutory manager shall not sell or otherwise dispose of—
 - (a) The whole or any substantial part of the business undertaking of a registered bank pursuant to subsection (1) of this section:
 - (b) Any of the shares of any body corporate formed and registered pursuant to subsection (2)(a) of this section:
 - (c) The whole or any substantial part of the business undertaking of any body corporate formed and registered pursuant to subsection (2)(a) of this section,—unless the statutory manager has consulted with the Bank and the Bank, with the consent of the Minister, has given approval

in writing to the sale or other disposition and the terms and conditions of it.

Compare: 1964 No 134 s 38AE(1)-(3); 1986 No 131 s 10; 1989 No 11 s 50(1), (2)

Subsection (1)(a) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the words “Companies Act 1993” for the words “Companies Act 1955”. Subsection (1)(b) and (1)(d) were amended by the same provision by inserting the words “or acquire” and the words “or issue”, respectively.

133 Consents not required under other Acts

The provisions of any enactment or agreement requiring any consent, licence, permission, clearance or other authority shall not have any application in respect of—

- (a) The sale or other disposition of the whole or any part of the business undertaking of a registered bank pursuant to section 132(1) of this Act;
- (b) The sale or other disposition pursuant to section 132(2)(e) of this Act of any of the shares of any body corporate formed and registered pursuant to subsection (2)(a) of that section;
- (c) The sale or other disposition pursuant to section 132(2)(e) of this Act of the whole or any part of the business undertaking of that body corporate—

being a sale or disposition to which the Bank has, with the consent of the Minister, given its approval under section 132(3) of this Act.

Compare: 1964 No 134 s 38AE(4); 1986 No 131 s 10; 1989 No 11 s 50(3)

134 Sale of property or assets subject to a security

(1) A statutory manager may—

- (a) Sell or otherwise dispose of any property or assets of a registered bank pursuant to section 132(1) of this Act; or
- (b) Sell or otherwise dispose of any property or assets of a registered bank to any body corporate formed and registered pursuant to section 132(2)(a) of this Act; or
- (c) Sell or otherwise dispose of any shares, or property or assets, of a body corporate formed and registered pursuant to section 132(2)(a) of this Act—

notwithstanding the existence, or the terms and conditions, of any security over the property or those assets in favour of any other person.

- (2) If the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank under section 132(1), being property or assets subject to a security interest, other than a security interest of the kind described in subsection (6), the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.
- (3) Where a statutory manager of a registered bank sells or otherwise disposes of any property or assets of that registered bank to any body corporate formed and registered pursuant to section 132(2)(a) of this Act, being property or assets subject to a security in favour of any other person, the property or those assets shall continue to be subject to that security.
- (4) If a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered under section 132(2)(a), any property or assets of which are subject to a security interest, other than a security interest of the kind described in subsection (6), the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares.
- (5) If a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered under section 132(2)(a), being property or assets subject to security interest, other than a security interest of the kind described in subsection (6), the person entitled to the security interest must be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.
- (6) The kind of security interest referred to in this section is a security interest that—

- (a) is over all or any part of the bank's or body corporate's (as the case may be) accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest; and
 - (c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- (7) In this section, **account receivable**, **inventory**, **new value**, **purchase money security interest**, **proceeds**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.

Compare: 1964 No 134 s 38AE(5)-(9); 1986 No 131 s 10; 1989 No 11 s 51

Subsections (2), (4) and (5) were substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See also* Part 12 of that Act for transitional provisions.

Subsections (6) and (7) were inserted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See also* Part 12 of that Act for transitional provisions.

135 Proof of transactions

- (1) The presentation to any Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers, of any instrument transferring or otherwise disposing of any property or assets of a registered bank or any shares in, or property or assets of, any company incorporated pursuant to section 132(2)(a) of this Act—
- (a) Executed or purporting to be executed by or on behalf of the registered bank or company; and
 - (b) Containing a recital that the transfer or other disposition of the property or assets of the registered bank, or the shares in, or property or assets of, the company, is made pursuant to section 132 of this Act—
- shall, in the absence of evidence to the contrary, be sufficient proof that the transfer or other disposition is made under the authority of that section.
- (2) The presentation to any Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers of a certificate signed by the statutory man-

ager that the amount secured by a charge over any property or assets of a registered bank or any company formed and registered pursuant to section 132(2)(a) of this Act has been paid shall, in the absence of evidence to the contrary, be sufficient proof that the amount secured by the charge has been repaid.

Compare: 1964 No 134 s 38AE(10), (11); 1986 No 131 s 10; 1989 No 11 s 72

136 Liquidation of registered banks

- (1) Subject to this Part of this Act, a statutory manager of a registered bank may, with the prior approval of the Bank,—
 - (a) In the case of a registered bank which may be put into liquidation under the Companies Act 1993, apply under that Act to put the registered bank into liquidation:
 - (b) In the case of a registered bank which is an individual, petition under the Insolvency Act 1967 to have that registered bank declared bankrupt:
 - (c) In the case of a registered bank constituted under any other Act, take such steps as are provided for in that Act for the winding up, liquidation, or dissolution of that registered bank.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of a statutory manager of a registered bank, not being a registered bank referred to in subsection (1) of this section, order that the registered bank to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the registered bank shall be wound up in the manner specified.
- (3) A statutory manager shall not make a recommendation under subsection (2) of this section without the prior approval of the Bank.
- (4) Nothing in this section limits or affects any other enactment which provides for the winding up, liquidation, or dissolution of any body corporate or any class of body corporate.

Compare: 1964 No 134 s 38AF; 1986 No 131 s 10; 1989 No 11 s 52

Section 136 was substituted, as from 1 July 1994, by section 2 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Subsection (1A) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the

words “the Companies Act 1955 or”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1A) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “that Act” for the words “either of those Acts”. *See* sections 49 to 52 of that Act as to the transitional provisions.

137 Provisions applying where liabilities included in sale

- (1) Where all or any part of any liability of a registered bank is included in the sale or other disposition of the business undertaking of that registered bank, or any part of it, pursuant to section 132 of this Act—
- (a) The registered bank shall, as from the date of such sale or other disposition, be relieved from all its obligations in respect of that liability, or part of it; and
 - (b) The person entitled to performance in respect of that liability shall be entitled to enforce performance of that liability or part of it against the person to whom the business undertaking is sold or otherwise disposed of in the same manner and to the same extent as that person was entitled to enforce performance against the registered bank; and
 - (c) The inclusion of part of a liability shall not relieve the registered bank from any obligation in respect of any part of the liability not included in the sale or other disposition.
- (2) Where all or any part of any liability of a body corporate formed and registered under section 123(1) of this Act, or all or any part of any liability relating to the business carried on by a branch of any body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, is included in such a sale or other disposition, nothing in subsection (1)(a) of this section shall relieve any body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand from any obligation in respect of that liability.

Compare: 1964 No 134 s 38AG; 1986 No 131 s 10; 1989 No 11 s 53

138 Power to trace property improperly disposed of

- (1) In any case where, whether before or after the passing of this Act,—
- (a) Any property has been acquired by a person in circumstances which cause it to be just and equitable that that person should hold it upon trust for any registered bank that has been declared to be subject to statutory management; or
 - (b) Any property has been improperly disposed of, whether or not the property has become subject to a trust,—
- the Court may, if it thinks fit, make an order—
- (c) That the property be transferred or delivered to the statutory manager:
 - (d) That any person who acquired or received the property, or his or her administrator, shall pay to the statutory manager a sum not exceeding the value of that property.
- (2) For the purpose of giving effect to any such order, the Court may make such further order as it thinks fit.
- (3) No order made pursuant to this section shall 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.
- (4) Nothing in this section restricts the operation of the Companies Act 1993.

Compare: 1989 No 11 s 54

Subsection (4) was substituted, as from 1 July 1994, by section 3 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Subsection (4) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the words “the Companies Act 1955 or”. See sections 49 to 52 of that Act as to the transitional provisions.

139 Application of certain provisions of Companies Act 1993

- (1) Sections 275, 292 to 301, 310G, 310I, and 312 of the Companies Act 1993 shall apply to a registered bank that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if—
- (a) The registered bank was a company in liquidation under that Act; and

- (b) The statutory manager of the registered bank was the liquidator of the company; and
 - (c) The date on which, and the time at which, the registered bank became subject to statutory management was the date on which, and the time at which, the liquidation commenced.
- (2) Nothing in section 263 of the Companies Act 1993 shall apply to a registered bank by virtue of the application of section 312 of that Act.
- (3) To avoid doubt, the reference in section 275(4) of the Companies Act 1993 to clause 1(a) of Schedule 7 of the Companies Act 1993 must be read as a reference to section 148(1) of this Act.

Compare: 1989 No 11 s 55

Section 139 was substituted, as from 1 July 1994, by section 4 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118). *See* section 5 of that Act for the transitional provisions.

Section 139(1): amended, on 20 September 2007, by section 4(1) of the Reserve Bank of New Zealand Amendment Act 2007 (2007 No 76).

Subsection (1) was amended, as from 26 April 1999, by section 6(1) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the expression “, 310G, 310I,”.

Subsection (1)(c) was substituted, as from 26 April 1999, by section 6(2) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 139(3): added, on 20 September 2007, by section 4(2) of the Reserve Bank of New Zealand Amendment Act 2007 (2007 No 76).

Miscellaneous provisions

140 Application of this Part to joint statutory managers, associated persons, and subsidiaries

- (1) Where an Order in Council is made under section 117 of this Act appointing 2 or more persons as statutory managers of a registered bank, the order shall state whether the powers conferred by this Part of this Act shall be exercised by those persons acting together or may be exercised individually.
- (2) For the purposes of this Part of this Act, unless the context otherwise requires,—
- (a) References to a statutory manager shall, where 2 or more persons are appointed as statutory managers include references to those statutory managers:

- (b) Where an associated person of a registered bank is declared to be subject to statutory management, or a subsidiary of a registered bank becomes subject to statutory management under section 117(2) of this Act, references in sections 119 to 139 and in sections 141 to 156 of this Act to a registered bank shall be read as references to that associated person or subsidiary, as the case may be.

Compare: 1964 No 134 s 38R(11), (12); 1986 No 131 s 10; 1989 No 11 s 56

141 Termination of appointment of statutory manager

- (1) The Minister may, by notice in writing to the statutory manager of a registered bank that is given in accordance with the recommendation of the Bank, terminate the appointment of that statutory manager for inability to perform the functions of the office or for bankruptcy or if the Minister is of the opinion that the statutory manager has failed to perform the statutory manager's duties satisfactorily.
- (2) A statutory manager of a registered bank may resign office by notice in writing to the Minister.
- (3) Where the appointment of a statutory manager is terminated under subsection (1) of this section or a statutory manager resigns office, or dies, the Minister may, by notice published in the *Gazette*, appoint a person to replace that statutory manager for a specified period.
- (3A) Where a notice is published in the *Gazette* under subsection (3) of this section appointing 2 or more persons as statutory managers, the notice shall state whether the powers conferred by this Part of this Act shall be exercised by those persons acting together or may be exercised individually.
- (4) A statutory manager continues in office until his or her successor is appointed despite—
 - (a) his or her resignation; or
 - (b) his or her period of appointment having expired.
- (5) A registered bank continues to be subject to statutory management under section 117 even though its statutory manager—
 - (a) has had his or her appointment terminated, or
 - (b) has resigned from office; or

- (c) has died, or
 - (d) has ceased to hold office because of the expiry of his or her period of appointment:
- (6) The Bank must publish a notice given by the Minister under this section in the *Gazette* as soon as practicable.

Compare: 1964 No 134 s 38AH; 1986 No 131 s 10; 1989 No 11 s 57

Subsection (1) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words “inability to perform the functions of the office” for the word “disability”.

Subsection (1) was substituted, as from 21 August 2003, by section 41.

Subsection (3) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “the Minister may, by notice published in the *Gazette*, appoint a person to replace that statutory manager for a specified period” for the words “the Governor-General may, by Order in Council, on the advice of the Minister given on the recommendation of the Bank, appoint a person to replace that statutory manager”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (3A) was inserted, as from 8 April 1992, by section 2 Reserve Bank of New Zealand Amendment Act 1992 (1992 No 32).

Subsection (3A) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “a notice is published in the *Gazette*” for the words “an Order in Council is made”. See sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

Subsections (5) and (6) were substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

142 Statutory manager may apply to High Court for directions

- (1) A statutory manager of a registered bank may apply to the High Court for directions concerning the business or property of the registered bank or the management or administration of that business or property, or the exercise of any powers under this Part of this Act.
- (2) On any application under subsection (1) of this section the High Court may give directions concerning the business or property of the registered bank, or the management or administration of that business or property, or the exercise of any

powers under this Part of this Act and every person shall be bound by any such directions.

Compare: 1964 No 134 s 38AI; 1986 No 131 s 10; 1989 No 11 s 58

143 Prior winding up, liquidation, or receivership to cease

- (1) Where a registered bank, or any subsidiary or associated person of a registered bank, becomes subject to statutory management, and that registered bank, subsidiary, or associated person is already being wound up or is already in liquidation, receivership, or voluntary administration,—
 - (a) the winding up, liquidation, receivership, or voluntary administration of that registered bank, subsidiary, or associated person must, for so long as it continues to be subject to statutory management, cease; and
 - (b) the person appointed as liquidator, receiver, or administrator must be discharged.
- (2) Where the statutory management of any registered bank, subsidiary, or associated person referred to in subsection (1) of this section is terminated by, or as the result of the making of, an Order in Council under section 144(1) of this Act, the liquidation or receivership or voluntary administration of that registered bank, subsidiary, or associated person shall, unless the Order in Council terminating the statutory management otherwise provides, and subject to such terms and conditions as the order may specify, revive as if it had not ceased by reason of this section.
- (3) Where any liquidation, receivership, or voluntary administration revives under subsection (2), the person specified in the order as such must be the liquidator, receiver, or administrator of that registered bank, subsidiary, or associated person for the time being.

Compare: 1989 No 11 s 61

Section 143(1): substituted, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Subsection (1) was substituted, as from 1 July 1994, by section 6 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 143(2): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Section 143(3): substituted, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

143A Continuation of statutory management

- (1) This section applies to a registered bank, an associated person of a registered bank, or a subsidiary of a registered bank, that has been removed from the New Zealand register under section 317 of the Companies Act 1993 while subject to statutory management under this Act.
- (2) If a person to whom this section applies is restored to the New Zealand register under section 328 of the Companies Act 1993, the person continues to be subject to statutory management from the date that person is so restored.

Section 143A was inserted, as from 21 August 2003, by section 37 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

144 Termination of statutory management

- (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) Any registered bank:
 - (b) Any associated person of a registered bank:
 - (c) Any subsidiary of a registered bank,—subject to statutory management, shall cease to be subject to statutory management.
- (2) Any registered bank, or associated person of a registered bank, or subsidiary of a registered bank shall cease to be subject to statutory management if that registered bank, or associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager.
- (3) Any person who is affected by the making of an Order in Council under section 117 of this Act may, at any time, request the Bank to make a recommendation under subsection (1) of this section.
- (4) Where an Order in Council is made under subsection (1) of this section or, a registered bank, associated person, or subsidiary is put into liquidation—
 - (a) That person shall cease to be subject to statutory management at the specified time; and

- (b) The appointment of any statutory manager appointed in respect of that person shall terminate at the specified time; and
 - (c) The appointment of any person as a member of an advisory committee under section 119 of this Act in relation to the statutory management of that person shall terminate at the specified time.
- (5) For the purposes of subsection (4) of this section **specified time** means,—
 - (a) In any case where an Order in Council is made pursuant to subsection (1) of this section, the date and time specified in the order:
 - (b) In any case where a liquidator is appointed, the date and time of the liquidator's appointment.
- (6) Where an Order in Council is made under subsection (1) of this section declaring that a registered bank shall cease to be subject to statutory management,—
 - (a) Every subsidiary of that registered bank, except any subsidiary specified in the order, shall cease to be subject to statutory management on the same date as that specified as the date upon which, and at the same time as that specified as the time at which, the registered bank ceases to be subject to statutory management:
 - (b) The appointment of any person appointed as a statutory manager of every such subsidiary shall terminate on the date and at the time referred to in paragraph (a) of this subsection:
 - (c) The appointment of any person appointed as a member of an advisory committee under section 119 of this Act in relation to the statutory management of that subsidiary shall terminate on the date and at the time referred to in paragraph (a) of this subsection.

Compare: 1964 No 134 s 38AJ; 1986 No 131 s 10; 1989 No 11 s 62

Subsection (2) was substituted, as from 1 July 1994, by section 7(1) Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Subsection (4) was amended, as from 1 July 1994, by section 7(2) Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118) by substituting the words “a registered bank, associated person, or subsidiary is put into liquidation” for the words “a winding-up order is made in respect of a registered bank, associated person, or subsidiary”.

Subsection (4)(a) to (c) was amended, as from 26 April 1999, by section 7(a) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by substituting the words “at the specified time” for the words “on the specified date”.

Subsection (5) was amended, as from 26 April 1999, by section 7(b) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by substituting the word “time” for the word “date”.

Subsection (5)(b) was substituted, as from 1 July 1994, by section 7(3) Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Subsection (5)(a) and (b) was amended, as from 26 April 1999, by section 7(c) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “and time”.

Subsection (6)(a) was amended, as from 26 April 1999, by section 7(d) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “, and at the same time as that specified as the time at which,”.

Subsection (6)(b) and (c) was amended, as from 26 April 1999, by section 7(e) Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22) by inserting the words “and at the time”.

145 Obligations incurred by statutory manager

- (1) Any obligations incurred by a statutory manager of a registered bank in the course of his or her duties as statutory manager are incurred by that statutory manager on behalf of the registered bank, and the statutory manager does not incur personal liability for those obligations.
- (2) In the winding up or liquidation of a registered bank or an associated person of a registered bank or a subsidiary of a registered bank, all amounts required to satisfy obligations incurred by the statutory manager on behalf of the registered bank, associated person, or subsidiary must be paid in priority to all other debts.

Section 145 was substituted, as from 1 July 1994, by section 8 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 145 was substituted, as from 21 August 2003, by section 38 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

146 Indemnity *[Repealed]*

Section 146 was repealed, as from 21 August 2003, by section 39 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

147 Registered bank not entitled to be informed about exercise of powers

Except as otherwise provided in this Part of this Act, no registered bank, associated person, or subsidiary, and no director, officer, or employee of a registered bank, associated person, or subsidiary, has a right to be consulted or informed as to the exercise, or possible exercise, of any powers conferred by this Part of this Act or to make representations to any person as to the exercise, or possible exercise, of those powers.

Compare: 1989 No 11 s 64

148 Expenses of statutory management

- (1) All costs, charges, and expenses properly incurred by a statutory manager or a member of an advisory committee in the exercise of the manager's or the member's functions and powers under this Part of this Act (including such remuneration as may be approved by the Bank) shall be payable out of the property of the registered bank or associated person of the registered bank or a subsidiary of the registered bank in respect of which the statutory manager or member is appointed in priority to all other claims.
- (2) The statutory manager may, with the approval of the Bank, apportion the costs, charges, and expenses referred to in subsection (1) between the registered bank and any associated person or subsidiary of the registered bank that is also subject to statutory management in the amounts that the statutory manager considers just and equitable.
- (3) This section prevails over section 145.

Compare: 1964 No 134 s 38AL; 1986 No 131 s 10; 1989 No 11 s 65

Section 148 was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words "or associated person of the registered bank or a subsidiary of the registered bank" after the words "registered bank". See sections 49 to 52 of that Act as to the transitional provisions.

Subsections (2) and (3) were inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

149 Advances to statutory manager and members of advisory committee

- (1) With the consent of the Minister, there may be advanced out of the Crown Bank Account, without further appropriation than this section, to a statutory manager of a registered bank or a member of an advisory committee, such amounts as the Minister may approve in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, that person.
- (2) All money so advanced to that person shall be refunded to the Crown out of money payable to that person, and the Crown shall have all the rights of the person to whom the advance was made to receive and recover that money. Money refunded to the Crown shall be credited upon receipt to the Crown Bank Account.

Compare: 1989 No 11 s 66

150 Duty to deliver books and property to statutory manager

- (1) Every person having possession, custody, or control of any books, or records, or documents, or other property belonging to any registered bank subject to statutory management, shall forthwith after it becomes subject to statutory management, deliver or give possession of those books, records, documents, or other property to the statutory manager.
- (2) If any person fails for 7 days to comply with the requirements of subsection (1) of this section, that person commits an offence against this Act.
- (3) If any person fails to comply with subsection (1) of this section, the statutory manager may, at any time, certify the failure to the Court (whether or not an offence has been committed under subsection (2) of this section), and the Court may inquire into the matter and, after hearing any witnesses who may be produced against, or by, or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender as if the offender had been guilty of contempt of Court.
- (4) It shall not be a defence to any proceedings under this section that the person in possession or control of any property is, or was, a trustee of the property for the registered bank, or entitled

to a lien or other charge over the property, or was a receiver or manager of the property.

- (5) The penalty for an offence against this section is set out in section 156AC.

Compare: 1989 No 11 s 67

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words “possession, custody, or control” for the words “possession and control”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the words “and is liable on summary conviction to a fine not exceeding \$5,000 and to a further fine not exceeding \$100 for every day after the expiration of those 7 days during which the offence has continue”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (5) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

151 Offence to destroy, alter, or conceal records

- (1) Every person commits an offence against this Act who—
- (a) With intent to defeat the purposes of this Part of this Act, destroys, alters, or conceals any book, document, or record of, or relating to, a registered bank that is subject to statutory management or sends or attempts to send out of New Zealand any such book, document, or record; or
 - (b) Fails or refuses to answer, to the best of that person’s knowledge and ability, any question which that person may be asked by the statutory manager in relation to any such book, or document, or record, or any property, or wilfully gives a false or misleading answer to that question.
- (1A) The penalty for an offence against this section is set out in section 156AC.
- (2) If, in any prosecution for an offence alleged to have been committed against this section, it is proved that the person charged with the offence has destroyed, altered, or concealed any book, document, or record, or has sent, or attempted to send, out of New Zealand, any such book, document, or record, the onus

of proving that in so doing that person had not acted in contravention of this section shall lie on that person.

Compare: 1989 No 11 s 68

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by omitting the words “, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000,”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(b) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by inserting the words “or misleading” after the word “false”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

152 Regulations relating to powers of Bank and statutory manager

- (1) The Governor-General may, from time to time, by Order in Council, make regulations under section 173 of this Act conferring on the Bank, or a statutory manager of a registered bank, ancillary or additional powers necessary or desirable for the purposes of this Part of this Act.
- (2) The regulations shall be laid before the House of Representatives within 12 sitting days after the date on which they are made if the House of Representatives is then in session, and, if not, shall be laid before the House of Representatives within 12 days after the commencement of the next ensuing session.
- (3) Regulations laid before the House of Representatives in any session pursuant to subsection (2) of this section shall expire on the close of the earlier of—
 - (a) The end of the session in which the regulations are made;
 - (b) The end of the calendar year following the year in which the regulations were made—unless the regulations are expressly validated or confirmed by an Act of Parliament passed before they expire.
- (4) Unless otherwise provided, the repeal of any Act passed pursuant to subsection (3) of this section shall not, of itself, affect

the validity of any regulations validated or confirmed by the Act repealed.

Compare: 1964 No 134 s 38AM; 1986 No 131 s 10

153 Application of other Acts

- (1) Subject to subsection (2) of this section, all the provisions of the Companies Act 1993 and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a company within the meaning of section 2 of that Act and that is subject to statutory management.
- (2)
- (3)
- (4) Nothing in sections 120, 196 to 209B, and 214 of the Companies Act 1993 shall apply to a registered bank that is subject to statutory management.
- (5) Nothing in the Receiverships Act 1993 shall apply to a company that is subject to statutory management.
- (6) Subject to subsection (7) of this section, all the provisions of the Building Societies Act 1965 and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a building society within the meaning of section 2 of that Act and that is subject to statutory management.
- (7) Nothing in sections 76 and 91 to 106 of the Building Societies Act 1965 shall apply to a building society that is subject to statutory management.
- (8) The Governor-General may, from time to time, 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 under which any other registered bank that is subject to statutory management is incorporated, constituted, or registered corresponding with the provisions referred to in subsections (4), (7), and (9) shall not apply to that registered bank.
- (9) To avoid doubt, the Bank or any other person is not a director (within the meaning of section 126 of the Companies Act 1993) of any registered bank or an associated person of

the registered bank by reason only of the Bank or that other person exercising the powers conferred by this Part.

Section 153 was substituted, as from 1 July 1994, by section 9 Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Subsection (1) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting “the Companies Act 1993” for “the Companies Act 1955”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsections (2) and (3) were repealed, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was amended, as from 18 June 2007, by section 17 Companies Amendment Act (No 2) 2006 (2006 No 62) by substituting “209B” for “210”. *See* clause 2(1) Companies Amendment Act (No 2) 2006 Commencement Order 2007 (SR 2007/108).

Subsection (8) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting “subsections (4), (7), and (9)” for “subsections (2), (4), and (7) of this section”. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (9) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

154 Appointment of auditors

- (1) The statutory manager of a registered bank must appoint 1 or more persons (whether as individuals or as the members from time to time of any firm or firms) who are qualified for appointment as auditors of a company under the Companies Act 1993 and who have been approved by the Bank to be the auditor of that registered bank.
- (2) Every such appointment shall be for a term not exceeding 2 years, but any person appointed as auditor shall continue in office until a successor comes into office.
- (3) Any person appointed as auditor shall be eligible for reappointment.
- (4) Any auditor may be removed from office at any time by the Minister, by notice in writing to the auditor, for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.
- (5) The auditor shall be paid such fees as are fixed by the statutory manager with the approval of the Bank.

- (6) Every auditor shall have a right of access at all times to the books and papers of the registered bank, and shall be entitled to require from its officers and employees such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.
- (7) Any person holding office as auditor of a registered bank at the time that it is declared to be subject to statutory management shall cease to hold that office but may be appointed under this section as auditor of the registered bank.
- (8) A notice given under subsection (4) must be published in the *Gazette* as soon as practicable.

Subsection (1) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsection (1) was substituted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was amended, as from 1 January 2002, by section 70(1) Human Rights Amendment Act 2001 (2001 No 96), by substituting the words "inability to perform the functions of the office" for the word "disability".

Subsection (4) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the words "Minister, by notice in writing to the auditor," for the words "Governor-General in Council" in the first place where they occurred. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (4) was amended, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46) by substituting the word "Minister" for the words "Governor-General in Council" in the second place where they occurred. *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (8) was inserted, as from 21 August 2003, by section 41 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

155 Annual accounts

- (1) Within 3 months after the end of each financial year or such later date as may be approved by the Bank, the statutory manager of a registered bank shall prepare the following statements showing the financial position of the registered bank and its subsidiaries at the end of that year and the results of their trading for that year:
 - (a) A balance sheet and profit and loss statement of the registered bank; and

- (b) A consolidated statement of assets and liabilities and consolidated statement of trading of the registered bank and its subsidiaries.
- (2) The balance sheet, and the consolidated statement of assets and liabilities, shall each be signed by the statutory manager.
- (3) The accounts specified in subsection (1) of this section shall be audited and reported on by the auditor.

156 Annual report by statutory manager

- (1) The statutory manager of a registered bank shall, after the end of each financial year, prepare a report on the conduct of the management and the affairs of the registered bank and its subsidiaries.
- (2) The report, together with the accounts and the auditor's report on them, shall be submitted to the Minister and the Bank within 7 days after the completion of the auditor's report.
- (3) The report, accounts, and the auditor's report on them shall within 14 days after submission to the Minister be filed—
 - (a) In the case of a registered bank which is a company, with the Registrar of Companies:
 - (b) In the case of a registered bank which is a building society, with the Registrar of Building Societies:
 - (c) In the case of any other body corporate, with the person exercising functions corresponding with those of the Registrar of Companies or the Registrar of Building Societies.

Penalties for offences against this Part

The heading "Penalties for offences against this Part" was inserted, as from 21 August 2003, by section 40 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

156AA Penalty for miscellaneous offences

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000:

- (b) in the case of a body corporate, to a fine not exceeding \$500,000.
- (2) The provisions are—
 - (a) section 77A (which relates to failing to comply with the requirement for consent to be sought from the Bank in the event of a significant change of ownership):
 - (b) section 94 (which relates to failing to comply with a requirement from the Bank that information, data, or forecasts be audited):
 - (c) section 98B(2)(a) (which relates to failing to comply with the requirements notified by the Bank in relation to a home country supervisor):
 - (d) section 98B(2)(b) (which relates to supplying any information or data to a home country supervisor that is false or misleading in a material particular):
 - (e) section 105 (which relates to the misuse of confidential information):
 - (f) section 115 (which relates to the unauthorised disclosure of the fact that a direction has been given).

Sections 156AA to 156AC were inserted, as from 21 August 2003, by section 40 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156AB Penalty for offences relating to supply of information, etc

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.
- (2) The provisions are—
 - (a) section 74 (which relates to failing to comply with a condition of registration):
 - (b) section 89B (which relates to failing to make the most recent disclosure statement publicly available):
 - (c) section 93 (which relates to a registered bank failing to comply with provisions concerning the supply of infor-

mation for the purposes of prudential supervision and to supplying information that is false or misleading in a material particular):

- (d) section 93B (which relates to a person failing, after being required by a registered bank to do so, to supply the registered bank with information, data, or forecasts relating to that person in order to enable the registered bank to comply with a notice under section 93):
- (e) section 93C (which relates to a person failing to comply with provisions concerning the supply of information for the purposes of prudential supervision and to supplying information that is false or misleading in a material particular):
- (f) section 99(3) (which relates to hindering, obstructing, or delaying the conduct of an inspection).

Sections 156AA to 156AC were inserted, as from 21 August 2003, by section 40 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156AC Penalty for offences relating to registration of banks, disclosure statements, prudential supervision of registered banks, etc

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 18 months or to a fine not exceeding \$200,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$2,000,000.
- (2) The provisions are—
 - (a) section 70 (which relates to providing false or misleading information for the purposes of an application for registration):
 - (b) section 72 (which relates to falsely holding out to be a registered bank):
 - (c) section 80 (which relates to failing to obtain or maintain a current credit rating):
 - (d) section 81AC (which relates to failing to supply information or data to a registered bank to enable the reg-

istered bank to comply with an Order in Council made under section 81):

- (e) section 89 (which relates to failing to publish information that is required to be published in a disclosure statement):
- (f) section 89A (which relates to publishing a disclosure statement that includes information that is false or misleading):
- (g) section 89C(1)(a) (which relates to failing to publish a disclosure statement that does not contain false or misleading information after being required to do so under section 83):
- (h) section 89C(1)(b) (which relates to failing to publish a disclosure statement that contains information that was previously omitted after being required to do so under section 83):
- (i) section 89C(1)(c) (which relates to failing to take the corrective action specified by the Bank in a notice given under section 83 after being required to do so under that section):
- (j) section 95 (which relates to failing to supply a report required by the Bank):
- (k) section 95A (which relates to failing to forward a report prepared under section 95 as required by the Bank):
- (l) section 99(4) (which relates to failing to comply with a requirement from the Bank to supply information for the purposes of an inspection and to supplying information that is false or misleading in a material particular):
- (m) section 103(1) (which relates to hindering, obstructing, or delaying an investigation, etc):
- (n) section 103(2) (which relates to failing to comply with a requirement of a person appointed to carry out an investigation, etc)
- (o) section 114(1) (which relates to failing to comply with a direction):
- (p) section 114(2) (which relates to obstructing or hindering, etc, a registered bank from giving effect to a direction):

- (q) section 126 (which relates to transferring or removing from New Zealand any property or assets of a registered bank that is subject to statutory management):
- (r) section 150 (which relates to failing to deliver books, records, etc, to a statutory manager):
- (s) section 151(1)(a) (which relates to destroying, altering, etc, any book, document, or record relating to a registered bank that is subject to statutory management):
- (t) section 151(1)(b) (which relates to failing or refusing to answer a statutory manager's question about any book, document, etc, relating to a registered bank that is subject to statutory management, and giving a false answer to that question).

Sections 156AA to 156AC were inserted, as from 21 August 2003, by section 40 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Part 5A

Retention of documents by banks

Part 5A was inserted, as from 30 June 1995, by section 2 Reserve Bank of New Zealand Amendment Act (No 2) 1995 (1995 No 34).

156A Retention of documents by banks

- (1) For the purposes of this section, **bank** means—
 - (a) A registered bank:
 - (b) The Reserve Bank of New Zealand:
 - (c) Any other person carrying on in New Zealand the business of banking.
- (2) Subject to this section, every bank—
 - (a) Shall retain, until the expiration of the period specified in subsection (3)(a) of this section, every cheque or bank draft that is drawn on that bank and that is presented to it for payment; and may thereafter destroy it:
 - (b) Shall retain, until the expiration of the period specified in subsection (3)(a) of this section, every bill of exchange or promissory note that is made payable at that bank and that is presented to it for payment; and may thereafter destroy it:

- (c) Shall retain, until the expiration of the period specified in subsection (3)(b) of this section, every voucher used in connection with account transactions at a bank or branch of a bank (including every deposit or withdrawal slip); and may thereafter destroy it.
- (3) For the purposes of subsection (2) of this section,—
 - (a) The period applicable in respect of a document to which paragraph (a) or paragraph (b) of that subsection applies shall be,—
 - (i) In the case of a document payable on demand, the period of 7 years beginning with the date of the document; and
 - (ii) In the case of any other document, the period of 7 years beginning with the due date of the document; and
 - (b) The period applicable in respect of a voucher to which paragraph (c) of that subsection applies, shall be the period of 7 years beginning with the date of the transaction to which the voucher relates.
- (4) It is sufficient compliance with the duty to retain imposed by subsection (2) of this section if—
 - (a) A copy of the document has been made by the bank on microfilm, microfiche, tape, disc, electronic or photographic storage media, or other means; and
 - (b) The copy is able to be reproduced therefrom in a form that can be produced in evidence under the Evidence Act 2006; and
 - (c) The copy is retained by the bank for the same period as the document is required to be retained pursuant to that subsection.
- (5) It is sufficient compliance with the duty to retain imposed by subsection (2) of this section, in the case of a cheque that has been presented for payment in accordance with section 7D(1)(b)(iii) of the Cheques Act 1960, if—
 - (a) The paying bank arranges, in accordance with the rules of an inter-bank clearing system (within the meaning of section 7A of that Act), for the retention, on behalf of the paying bank, of the cheque or a copy of it in accordance with subsection (4) of this section; and

- (b) The paying bank is entitled to obtain possession of the cheque or the copy; and
 - (c) The cheque or copy is retained on behalf of the paying bank for the period specified in subsection (3)(a) of this section.
- (6) No document shall be destroyed pursuant to this section at any time after a demand for the delivery of the document has been made to the bank by the person entitled to it.
 - (7) A copy of a document made pursuant to this section is admissible in evidence in legal proceedings to the same extent as the document of which it is a copy would have been admissible.
 - (8) This section applies to cheques, drafts, bills, and promissory notes received by a bank and vouchers in the possession of a bank either before or after the coming into operation of this section.

Section 156A was inserted, as from 30 June 1995, by section 2 Reserve Bank of New Zealand Amendment Act (No 2) 1995 (1995 No 34).

Subsection (4)(b) was amended, as from 1 August 2007, by section 216 Evidence Act 2006 (2006 No 69) by substituting “the Evidence Act 2006” for “section 47B of the Evidence Act 1908”. See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Part 5B

Oversight of payment systems

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

General

156B Exercise of powers under this Part

The powers conferred on the Bank by this Part must be exercised for the purpose of promoting the maintenance of a sound and efficient financial system.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

*Supply of information relating to payment
systems*

156C Requirement to supply information relating to payment system

- (1) The Bank may, by notice in writing to any person referred to in subsection (2), require that person to supply any information or data relating to a payment system.
- (2) A notice may be given to—
 - (a) an operator of a payment system; or
 - (b) any person who is wholly or partly responsible for the operation of a payment system; or
 - (c) a participant in a payment system.
- (3) A notice may specify—
 - (a) the periods for which, and the form in which, the information or data must be supplied; and
 - (b) the time by which, and the place in New Zealand at which, the information or data must be supplied.
- (4) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

156D Offence to fail to supply information

- (1) A person commits an offence if the person, without lawful justification or excuse,—
 - (a) fails to supply information or data in accordance with section 156C or fails to comply with any requirement of the Bank under that section; or
 - (b) supplies information or data in accordance with section 156C that is false or misleading in a material particular.
- (2) The penalty for an offence against this section is set out in section 156J.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

156E Requirement that information be audited

- (1) The Bank may, by notice in writing to any person referred to in section 156C(2), require that person to obtain an audit of any information or data supplied in accordance with section 156C if the Bank has reasonable grounds to believe that the information or data is inadequate or inaccurate.
- (2) Every audit must be conducted by a suitably qualified independent person who is approved by the Bank.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156F Offence not to comply with requirement for audit

- (1) A person commits an offence if the person fails, without lawful justification or excuse, to comply with a requirement under section 156E(1) for that person to obtain an audit.
- (2) The penalty for an offence against this section is set out in section 156J.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

*Disclosure of information relating to payment
systems*

156G Disclosure of information

- (1) The Bank may publish or disclose any information or data supplied in accordance with section 156C only if—
 - (a) the information or data is available to the public under any Act or is otherwise publicly available information; or
 - (b) the information or data is in a statistical or summary form; or
 - (c) the publication or disclosure of the information or data is for the purposes of, or in connection with, the exercise of powers conferred by this Act; or
 - (d) the publication or disclosure of the information or data is to any central bank, authority, or body in any other country that exercises functions that correspond with, or are similar to, those conferred on the Bank under this

- Act, and the Bank is satisfied that the information or data will be used by that central bank, authority, or body for the purpose of exercising those functions; or
- (e) the publication or disclosure of the information or data is to any person who the Bank is satisfied has a proper interest in receiving the information; or
 - (f) the publication or disclosure of the information or data is with the consent of the person to whom the information relates or of the person to whom the information is confidential.
- (2) The Bank must not publish or disclose information or data under subsection (1)(d) or (e) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of that information or data.
 - (3) An officer or employee of the Bank must not publish or disclose any information or data supplied in accordance with section 156C except for the purposes of, or in connection with, the exercise of powers conferred by this Act.
 - (4) An officer or employee of the Bank commits an offence if the officer or employee contravenes this section.
 - (5) The penalty for an offence against this section is set out in section 156J.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156H Limits on further disclosure of information

- (1) A person to whom any information or data is published or disclosed must not publish, disclose, or use that information or data unless the publication, disclosure, or use is,—
 - (a) in the case of a publication or disclosure under section 156G(1)(c),—
 - (i) for the purposes of, or in connection with, the exercise of powers conferred by this Act; and
 - (ii) in accordance with any conditions that may be imposed by the Bank;
 - (b) in the case of a publication or disclosure under section 156G(1)(e),—

- (i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or
 - (ii) necessary or desirable for the exercise of any function or power conferred by any enactment:
- (c) in the case of a publication or disclosure under section 156G(1)(f), in accordance with the terms and conditions of the consent referred to in that paragraph.
- (2) A person commits an offence if the person contravenes this section.
- (3) The penalty for an offence against this section is set out in section 156J.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156I Application of other enactments to information published or disclosed under section 156G

Nothing in any Act, other than this Act or the Official Information Act 1982, requires the Bank or any person to whom information or data has been published or disclosed under section 156G to make that information or data available to any other person.

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Penalties for offences against this Part

156J Penalties for offences

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$500,000.
- (2) The provisions are—
 - (a) section 156D (which relates to failing to supply information relating to a payment system):

- (b) section 156F (which relates to failing to comply with a requirement for an audit):
- (c) section 156G (which relates to disclosure of information supplied in accordance with section 156C):
- (d) section 156H (which relates to further disclosure of information).

Part 5B (comprising sections 156B to 156J) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Part 5C

Designated payment systems

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

General

156K Exercise of powers under this Part

The powers conferred on the Governor-General, the Minister, and the Bank by this Part must be exercised for the purposes of—

- (a) promoting the maintenance of a sound and efficient financial system; or
- (b) avoiding significant damage to the financial system that could result from the failure of a participant in a payment system.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156L Definitions for this Part

In this Part, unless the context otherwise requires,—

contact person, in relation to a payment system, has the meaning set out in section 156M(2)(c)

designated payment system means a payment system that is declared as a designated payment system under section 156M

insolvency means,—

- (a) in the case of a company or other body corporate,—

- (i) liquidation under Part 16 of the Companies Act 1993; or
 - (ia) voluntary administration under Part 15A of the Companies Act 1993; or
 - (ii) statutory management under Part 3 of the Corporations (Investigation and Management) Act 1989; or
 - (iii) statutory management under Part 5; or
 - (iv) liquidation, winding up, voluntary administration, statutory management, or other similar process under any other enactment or rule of law (whether of New Zealand or of another country); and
- (b) in the case of an individual, being adjudged a bankrupt under the Insolvency Act 1967 or any corresponding enactment (whether of New Zealand or of another country)

netted balance means any amount calculated under the netting provisions of the rules of a designated payment system as the net debit payable by, or on behalf of, a participant in the designated payment system to, or on behalf of, another participant in that system for all or any claims or obligations to which those rules apply

netting means the conversion into 1 net claim or obligation, or the set off, of different claims or obligations between participants in a payment system that results from the issue and receipt of payment instructions involving 2 or more participants in the payment system or that is otherwise provided for under the rules of the payment system,—

- (a) whether on a bilateral or multilateral basis; and
- (b) whether or not through the interposition of an operator of the payment system; and
- (c) whether or not the obligations or claims constitute mutual credits, mutual debts, or other mutual dealings; and
- (d) whether or not the obligations or claims are denominated in New Zealand currency

payment instruction means an instruction by a participant in a payment system—

- (a) that is made in accordance with the rules of that payment system; and
- (b) that results, or is intended to result, in 1 or more settlements being effected

rules,—

- (a) in relation to a payment system, means the rules of the payment system (whether made under bylaws, agreements, procedures, contracts, or other documents) that are evidenced in writing and that provide, among other things, for—
 - (i) the basis on which payment instructions are given; and
 - (ii) the basis on which payments are calculated; and
 - (iii) the basis on which settlements are effected (either on a gross basis or using netting); and
 - (iv) any action to be taken if a participant in the payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
 - (A) an operator of the payment system;
 - (B) another participant in the payment system;
 - (C) any other party to those rules; and
- (b) in the case of a designated payment system, means the rules of that payment system that are contained in documents specified in the designation under section 156M; and includes any amendments to those rules that have been notified to, and agreed by, the Bank

settlement means—

- (a) the making of a payment—
 - (i) that is done in accordance with a payment instruction; and
 - (ii) that is on a gross basis or that uses netting; and
 - (iii) whether by way of book entry on the accounts of a central bank or the operator of a designated payment system or otherwise; or

- (b) any other act that discharges a payment obligation in accordance with a payment instruction.

Section 156L **insolvency** paragraph (a)(ia): inserted, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Section 156L **insolvency** paragraph (a)(iv): amended, on 1 November 2007, by section 41 of the Companies Amendment Act 2006 (2006 No 56).

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Designation

156M Designation of payment system

- (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 any payment system to be a designated payment system.
- (2) The order must specify—
- (a) the payment system that is the subject of the designation; and
 - (b) the documents that evidence the rules of that payment system; and
 - (c) the name or title of a person to whom notices relating to the designation must be given (the contact person).
- (3) The order may also specify—
- (a) conditions to which the designation is subject; and
 - (b) that a particular operator is a participant in the payment system that is the subject of the designation.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156N Bank's recommendation subject to procedure in sections 156V to 156X

The procedure set out in sections 156V to 156X must be followed by the Bank when it makes a recommendation under section 156M(1).

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Effect of designation

156O Rules of designated payment system are valid and enforceable

- (1) The rules of a designated payment system are valid and enforceable despite any enactment or rule of law to the contrary.
- (2) However, subsection (1) applies only to the extent that the rules provide for—
 - (a) the basis on which payment instructions are given; and
 - (b) the basis on which payments are calculated; and
 - (c) the basis on which settlements are effected (either on a gross basis or using netting); and
 - (d) any action to be taken if a participant in the designated payment system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
 - (i) an operator of the designated payment system;
 - (ii) another participant in the designated payment system;
 - (iii) any other party to those rules.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156P Settlements must not be reversed, etc

- (1) A settlement that is effected under the rules of a designated payment system must not, whether in whole or in part, be reversed, repaid, recovered, or set aside despite any enactment or rule of law to the contrary.
- (2) Subsection (1) extends to any application made to a New Zealand court by a liquidator from another country to reverse, repay, recover, or set aside a settlement (whether in whole or in part) that relates to an insolvency in that country.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156Q Limits on application of section 156P(1)

- (1) Section 156P(1) does not apply to a settlement that is effected under the rules of a designated payment system if—

- (a) a participant in the designated payment system in respect of whom the settlement is effected becomes insolvent; and
 - (b) the settlement is effected after the commencement of that insolvency.
- (2) Despite subsection (1), section 156P(1) applies to the settlement if—
 - (a) the settlement is effected within 24 hours of the commencement of the insolvency; and
 - (b) the contact person can demonstrate that the contact person did not have notice of the commencement of the insolvency at the time that the settlement was effected.
- (3) For the purposes of subsection (2), a contact person is taken to have notice of the commencement of an insolvency if—
 - (a) the contact person fails to make any inquiries into the matter that an honest and reasonable person would have made in the circumstances; or
 - (b) the contact person fails to have regard to any public notice of the commencement of the insolvency that an honest and reasonable person would have had regard to in the circumstances.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156R Netting is valid and enforceable

If the rules of a designated payment system provide for netting, any netting under those rules is valid and enforceable despite any enactment or rule of law to the contrary.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156S Certain provisions of Companies Act 1993 and of Insolvency Act 1967 not to apply to netting

The following provisions do not apply to any netting under the rules of a designated payment system:

- (a) sections 310A to 310O of the Companies Act 1993;
- (b) sections 93A to 93H of the Insolvency Act 1967.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156T Limits on effect of section 156O or section 156P or section 156R

- (1) Nothing in section 156O or section 156P or section 156R prevents—
 - (a) the operation of any enactment or rule of law in relation to an underlying transaction (including, without limitation, sections 56, 292, 297, and 298 of the Companies Act 1993 and section 56 of the Insolvency Act 1967); or
 - (b) any party from taking action against another party that has acted fraudulently or dishonestly so long as the remedy sought or obtained in respect of that action does not affect the application of section 156O or section 156P or section 156R.
- (2) If a person brings an action under any enactment or rule of law in relation to an underlying transaction (including, without limitation, sections 56, 292, 297, and 298 of the Companies Act 1993 and section 56 of the Insolvency Act 1967), that person may produce evidence of a settlement before the court for the purpose of proving that—
 - (a) a participant received value by means of that settlement; and
 - (b) the value received was an element of the underlying transaction.
- (3) In this section, **underlying transaction**—
 - (a) means a transaction that gives rise to—
 - (i) a payment; or
 - (ii) a payment obligation; but
 - (b) does not include—
 - (i) a payment instruction; or
 - (ii) a settlement in accordance with the rules of a designated payment system.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156U Certain enactments prevail over sections 156O, 156P, and 156R

The following enactments prevail over sections 156O, 156P, and 156R:

- (a) sections 122(8) and 127(4):
- (b) sections 42(8) and 44(4) of the Corporations (Investigation and Management) Act 1989.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

*Procedure for making designation***156V Application for designation**

- (1) A person who wishes to have a payment system declared as a designated payment system may apply to the Bank.
- (2) An application must be accompanied by—
 - (a) a copy of the rules of the payment system and any information required by the Bank; and
 - (b) the application fee (if any) that is determined by the Bank and approved by the Minister by notice in the *Gazette*.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156W Consideration of application

- (1) The Bank must consider any application made in accordance with section 156V.
- (2) In considering an application, the Bank may have regard to any or all of the following matters:
 - (a) the purpose and scope of the payment system:
 - (b) the rules of the payment system:
 - (c) any laws or regulatory requirements relating to the operation of the payment system and the extent to which the payment system complies with those laws or regulatory requirements:
 - (d) the importance of the payment system to the financial system:
 - (e) any other matters that the Bank considers appropriate.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156X Decision on application

- (1) After considering an application, the Bank may—
 - (a) make a recommendation to the Minister that the payment system to which the application relates be declared to be a designated payment system under section 156M; or
 - (b) refuse to make that recommendation.
- (2) If subsection (1)(b) applies, the Bank must give notice in writing to the applicant stating—
 - (a) that the Bank refuses to make a recommendation that the payment system to which the application relates be declared to be a designated payment system under section 156M; and
 - (b) the reasons for the refusal.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Further provisions relating to designation

156Y Variation of designation

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, vary any designation made under section 156M—

- (a) by amending any of the matters referred to in section 156M(2)(b) and (c) and (3)(b); or
- (b) by revoking or amending any condition to which the designation is subject; or
- (c) by making the designation subject to a new condition.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156Z Revocation of designation

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

tion of the Bank, revoke any designation made under section 156M.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156ZA Settlement and netting not affected by variation or revocation of designation

The variation or revocation of a designation made under section 156M does not affect the application of sections 156O, 156P, and 156R to settlements that were effected, and netting that took place, before the variation or revocation.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156ZB Matters Bank may have regard to in recommending variation or revocation of designation

In determining whether to make a recommendation that any designation made under section 156M be varied or revoked, the Bank may have regard to any or all of the following matters:

- (a) the purpose and scope of the designated payment system:
- (b) the rules of the designated payment system:
- (c) any laws or regulatory requirements relating to the operation of the designated payment system and the extent to which the designated payment system complies with those laws or regulatory requirements:
- (d) the importance of the designated payment system to the financial system:
- (e) any failure to comply with any condition to which the designation is subject:
- (f) any other matters that the Bank considers appropriate.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156ZC Procedure for variation or revocation of designation

- (1) Before making a recommendation that any designation made under section 156M be varied or revoked, the Bank must—
 - (a) give the contact person notice of—
 - (i) the reasons for proposing to vary or revoke the designation; and
 - (ii) the fact that the contact person may make submissions to the Bank in relation to the proposed variation or revocation; and
 - (b) give the contact person an opportunity to make those submissions within a time period that the Bank considers reasonable in the circumstances; and
 - (c) consider any submissions made by the contact person during that time period.
- (2) The notice referred to in subsection (1)(a) may be given either in writing or orally depending on the circumstances of the particular case.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Supply of information

156ZD Supply of information relating to designated payment system

- (1) The Bank may, by notice in writing, require any or all of the following persons to supply the Bank with any information relating to any designated payment system:
 - (a) an operator of the designated payment system;
 - (b) a participant in the designated payment system;
 - (c) the contact person of the designated payment system.
- (2) The Bank may exercise the power conferred by subsection (1) only if the Bank considers that the information is reasonably required to enable it to perform its functions and duties under this Part.
- (3) A notice under subsection (1) may specify—
 - (a) the periods for which, and the form in which, the information must be supplied; and
 - (b) the manner in which the information must be verified.

- (4) A person commits an offence if the person, without lawful justification or excuse, fails to supply information in accordance with this section and is liable, on summary conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

156ZE Contact person must be notified of insolvency

- (1) This section applies if—
- (a) a participant in a designated payment system (**participant A**) becomes insolvent;
 - (b) any other participant whose settlements are effected by participant A through that designated payment system becomes insolvent.
- (2) If this section applies, participant A must, as soon as practicable after becoming aware of the insolvency, notify that fact to the contact person of that designated payment system.
- (3) It is sufficient compliance with the requirement to notify the contact person under subsection (2) if—
- (a) participant A takes all reasonable steps to comply with that requirement; or
 - (b) the contact person was already aware of the commencement of the insolvency by the time participant A had to notify the contact person under that subsection.

Part 5C (comprising sections 156K to 156ZE) was inserted, as from 21 August 2003, by section 42 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Part 6

Financial and other matters

157 Financial year

The Bank's financial year ends on the day on which the Government's financial year ends.

Section 157 was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

Income and expenditure

158 Meaning of notional surplus income

For the purposes of section 162, notional surplus income, in relation to a financial year of the Bank, means the realised net income of the Bank in that year, after—

- (a) deducting the amount of income estimated to be paid or applied in meeting the operating expenses of the Bank in carrying out the functions and exercising the powers referred to in section 159(1)—
 - (i) as determined under the relevant funding agreement; or
 - (ii) if a funding agreement has not been ratified in accordance with section 161, as determined under the funding agreement that applied to the previous financial year; and
- (b) adding actual operating expenses incurred by the Bank in carrying out those functions and exercising those powers; and
- (c) deducting the cumulative amount of unrealised losses and provisions (net of the cumulative amount of unrealised gains) incurred by the Bank in carrying out those functions and exercising those powers and reported by the Bank in its financial statements at the end of the relevant financial year (so long as those unrealised gains do not exceed those unrealised losses and provisions); and
- (d) adding any amounts deducted under paragraph (c) in respect of the calculation of notional surplus income for the previous financial year or, in respect of the first financial year after the commencement of this section, adding back the amount that would have been deducted under paragraph (c) in the previous financial year had that paragraph been in force; and
- (e) deducting any realised net income derived by the Bank from its other functions as shown in the financial statements of the Bank for that financial year; and

- (f) adding any realised net loss incurred by the Bank from its other functions as shown in the financial statements of the Bank for that financial year.

Section 158 was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

159 Funding agreements

- (1) The Minister and the Governor may enter into a funding agreement that specifies the amount of the Bank's income that may be paid or applied in meeting the operating expenses incurred by the Bank in each financial year in carrying out its functions and exercising its powers under—
 - (a) Part 2 (except sections 16, 32, 34, and 35):
 - (b) Parts 3 to 5:
 - (c) Part 5B:
 - (d) Part 5C:
 - (e) sections 163, 166, 167, and 190:
 - (f) if the Minister and the Governor agree, any other provision of this Act:
 - (g) any other Act.
- (2) There shall be a funding agreement applying for every financial year and each funding agreement shall apply to a period that comprises 5 consecutive financial years.
- (3) The Minister and the Governor may, from time to time, by agreement—
 - (a) Vary the provisions of a funding agreement; or
 - (b) Terminate a funding agreement and enter into a new funding agreement.

Subsection (1)(da) and (1)(db) was inserted, as from 21 August 2003, by section 43 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1) was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

160 Contents of funding agreements

Every funding agreement shall be in writing and—

- (a) Shall make provision for the operating expenses to be incurred by the Bank in carrying out the functions and exercising the powers set out in paragraphs (a) to (f) of subsection (1) of section 159 of this Act:

- (b) Shall make provision for such items as may, in accordance with generally accepted accounting practice, properly be taken into account in determining the operating expenses applicable to those functions and powers:
- (c) May provide for the extent, if any, to which any material change in the nature or extent of the work undertaken by the Bank in respect of any of those functions or powers shall require the total level of operating expenses to be redetermined between the Governor and the Minister:
- (d) May make provision for such other matters, not being matters that are inconsistent with this section, as the Governor and the Minister may think fit.

Paragraph (a) was amended, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113) by substituting the words “operating expenses” for the words “total expenditure”.

Paragraphs (b) and (c) were amended, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113) by substituting the words “operating expenses” for the word “expenditure”.

161 Funding agreements to be ratified by House of Representatives

- (1) Within 12 sitting days after a funding agreement is entered into, or a funding agreement is varied, the Minister shall lay a copy of the agreement or the variation before the House of Representatives.
- (2) No funding agreement, and no variation of a funding agreement, shall be effective for the purposes of this Act unless it is ratified by a resolution of the House of Representatives.

162 Application of surplus income

- (1) The amount by which, in any financial year, the actual net income of the Bank as shown in the financial statements of the Bank for that year exceeds the notional surplus income for that year, calculated in accordance with section 158 of this Act, shall be paid or credited to the reserves of the Bank.
- (2) The amount by which in any financial year the notional surplus income for that year, calculated in accordance with section 158 of this Act, exceeds the actual net income of the Bank for that year, as shown in the financial statements of the Bank for that year, shall be deducted from the reserves of the Bank.

- (3) An amount equal to the amount of the notional surplus income calculated in accordance with section 158 of this Act for each financial year shall be paid or credited, at the direction of the Minister, after consultation with the Bank,—
 - (a) To the reserves of the Bank or to the Crown; or
 - (b) To both the reserves of the Bank and to the Crown in proportions determined by the Minister after consultation with the Bank.
- (4) In determining the amount of the notional surplus income to be credited to the reserves of the Bank, the Minister shall have regard to—
 - (a) The capital requirements of the Bank; and
 - (b) The views of the Board of the Bank; and
 - (c) Any other relevant matters.

162A Obligation to provide statement of intent

The Bank must, in each financial year, provide to the Minister a statement of intent for the Bank and its subsidiaries for that financial year and at least the next 2 financial years.

Sections 162A to 162E were inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

162B Content of statement of intent

- (1) Each statement of intent must contain the following information for the full period to which it relates:
 - (a) key background information about the Bank and its operating environment;
 - (b) the nature and scope of the Bank's functions and its principal areas of operation;
 - (c) the nature of the Bank's specific objectives;
 - (d) the proposed strategies for achieving objectives and carrying out operations;
 - (e) the proposed strategies for managing the organisational health and capability of the Bank;
 - (f) a statement of the projected income and expenditure for the first financial year in the period to which the statement of intent relates.
- (2) Each statement of intent must be dated and signed by the Governor and the Deputy Chief Executive.

Sections 162A to 162E were inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

162C Process for providing statement of intent to Minister

To provide a statement of intent under section 162A, the Bank must—

- (a) prepare a draft statement of intent and provide it to the Minister not later than 30 days before the start of each financial year; and
- (b) consider the Minister's comments (if any) on the draft and provide the final statement of intent to the Minister on or before the start of the financial year.

Sections 162A to 162E were inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

162D Amendments by Bank to statement of intent

- (1) The Bank must amend its statement of intent if any matters arise that significantly affect or alter the information contained in the statement that relates to section 162B(1)(b), (d), or (e).
- (2) To amend its statement of intent, the Bank must—
 - (a) provide a draft amendment to the Minister; and
 - (b) consider the Minister's comments (if any) and provide the final amendment to the Minister as soon as practicable.

Sections 162A to 162E were inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

162E Statement of intent stands referred to House of Representatives

A final statement of intent and any amendments to it that have been provided to the Minister stand referred, by virtue of this section, to the House of Representatives.

Sections 162A to 162E were inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

163 Annual reports and accounts

- (1) Within 3 months after the end of each financial year the Bank must deliver to the Minister—

- (a) a report on the operations of the Bank and its subsidiaries during the financial year; and
 - (b) audited financial statements for the Bank for the financial year and, if the Bank has any subsidiaries, audited consolidated financial statements for the Bank and its subsidiaries for that year; and
 - (c) the auditor's report on those financial statements.
- (2) The report must contain—
- (a) information on the remuneration, compensation, and other benefits (including indemnities and insurance cover) provided or granted, during the financial year, to—
 - (i) each member of the Board or a committee of the Board (whose identity must be disclosed in the report for the purposes of this section); and
 - (ii) employees of the Bank (any of whose identity must not be disclosed in the report); and
 - (b) any other matters that the Bank is required, has undertaken, or wishes to report on in its annual report; and
 - (c) if the Board agrees, the Board's report prepared in accordance with section 53A; and
 - (d) any other information that is necessary, in conjunction with any policy statements published under section 15, to enable an informed assessment to be made of the Bank's performance in carrying out its functions during the financial year.
- (3) The documents delivered to the Minister under subsection (1) stand referred, by virtue of this section, to the House of Representatives.

Section 163 was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

163A Bank not Crown entity

The Bank is not a Crown entity for the purposes of the Crown Entities Act 2004.

Section 163A was inserted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

164 Contents of financial statements

- (1) The financial statements shall be prepared in accordance with generally accepted accounting practice and shall include—
 - (a) A statement of the Bank's financial position at its balance date:
 - (b) An operating statement reflecting the revenue and expenses of the Bank for that year by reference to the functions carried out by the Bank:
 - (c) A statement of cash flows reflecting the Bank's cash flow for that year:
 - (d) A statement of the Bank's commitments as at the balance date:
 - (e) A statement of the Bank's contingent liabilities as at the balance date:
 - (f) A statement of accounting policies:
 - (g) Such other statements as are necessary to fairly reflect the financial operations of the Bank for that year and its financial position at the end of that year:
 - (h) Comparative actual figures for the previous financial year for paragraphs (a) to (e) and, where appropriate, paragraph (g) of this section.
- (2) The financial statements shall show separately—
 - (a) Any payments made by the Bank under section 21(1) of this Act; and
 - (b) Any payments made by the Minister to the Bank under section 21(2) of this Act.

165 Management statements

- (1) The financial statements of the Bank shall be accompanied by a management statement signed by the Governor and the Deputy Chief Executive.
- (2) The management statement shall comprise:
 - (a) A statement of the management's responsibility for the preparation of the annual financial statements and the judgments used in them:
 - (b) A statement of the management's responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting:

- (c) A statement that, in the opinion of the management, the annual financial statements for the financial year fairly reflect the financial position and operations of the Bank.

166 Auditor-General to be auditor of Bank

The Bank is 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.

Compare: 1964 No 134 s 43; 1971 No 125 s 2

Subsection (1) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the words “Companies Act 1993” for the words “Companies Act 1955”.

Section 166 was substituted, as from 1 July 2001, by section 53 Public Audit Act 2001 (2001 No 10).

167 Performance audit

- (1) The Minister may, from time to time, appoint one or more persons (whether as individuals or as members from time to time of any firm or firms) to carry out an assessment of the performance by the Bank of its functions and of the exercise by the Bank of its powers under this Act.
- (2) As soon as practicable after completing an assessment the person appointed shall submit a report to the Minister setting out the results of that assessment.
- (3) The report stands referred, by virtue of this section, to the House of Representatives.
- (4) A person appointed to conduct an assessment under this section, for the purpose of conducting that assessment,—
 - (a) Shall have full access to all books and documents that are the property of or that are under the control of any person relating to the Bank or its affairs:
 - (b) May require any director, officer or employee of the Bank or any other person to answer any question relating to the Bank or its affairs:
 - (c) May, by notice in writing to any person, require that person to deliver any books or documents relating to the Bank or its affairs in the possession or under the control of that person and may take copies of them or extracts from them.

- (5) Nothing in subsection (4) of this section limits or affects section 105 of this Act.
- (6) The fees of the person appointed to carry out an assessment under this section shall be paid out of the funds of the Bank.

Subsection (3) was substituted, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113).

Part 7

Miscellaneous provisions

168 Bank to be good employer

The Bank shall operate a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal opportunities employment programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Opportunities for the enhancement of the abilities of individual employees.

Compare: 1986 No 124 s 4(1)(b), (2)

169 Bank to exhibit sense of social responsibility

It shall be an objective of the Bank to exhibit a sense of social responsibility in exercising its powers under this Act.

Compare: 1986 No 124 s 4(1)(c)

170 Application of Banking Act 1982 to Bank

[Repealed]

Section 170 was repealed, as from 30 June 1995, by section 2(4) Banking Act Repeal Act 1995 (1995 No 32).

171 Conflict with other Acts

If there is any conflict between this Act and the provisions of the Banking Act 1982, or of any other Act relating to any bank or to the business of banking, the provisions of this Act shall prevail.

Compare: 1964 No 134 s 48

172 Obligations under this Act not limited

An obligation or limitation imposed on a person by any other Act or instrument or by any trust or agreement shall not prevent or excuse that person from complying with any provision of this Act or any regulation made under it or with any direction, notice, requirement or condition given or imposed under that provision.

Compare: 1964 No 134 s 49

173 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for such matters as are necessary to enable the Minister or the Bank to exercise any powers and functions conferred on the Minister or the Bank by this Act or by any regulations made for any of the purposes of this Act:
- (b) Providing for the granting, refusal, and revocation of consents, permissions, and exemptions in respect of any matters to which any regulations made under this Act relate; and authorising the imposition, variation, and revocation of conditions subject to which such consents, permissions, and exemptions may be granted:
- (c) Providing for the furnishing of information and the production of books or documents to the Minister or the Bank or any other person for any of the purposes of any such regulations (whether or not the effect of doing so may be to require the furnishing of information, or the production of books or documents, that will reveal the identity or affairs of any particular person); and providing for the verification of any such information; and providing that any such books or documents may be copied, and may be retained or impounded, by any person or persons to whom they are produced:
- (d) Authorising the Minister or the Bank or any other person to exercise any discretionary power or authority for the purposes of any such regulations:

- (e) Providing for the delegation of any of the powers or functions of the Minister (including the power of delegation) or the Bank under any such regulations:
- (f) Providing for and regulating the issue, registration, transfer, control, and redemption of any securities issued by the Bank:
- (g) Prescribing forms for the purposes of this Act or of any such regulations, in any case where a form is not prescribed by this Act:
- (h) Providing for and regulating the giving or service of notices for the purposes of this Act or of any such regulations, and the effect of such notices:
- (i) Prescribing fees to be charged by the Bank in respect of any matter under this Act:
- (j) Prescribing offences against any such regulations, and prescribing fines not exceeding in respect of any such offence \$5,000 and, in the case of a continuing offence, \$200 for every day on which the offence has continued:
- (k) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Compare: 1964 No 134 s 50; 1977 No 68 s 6

174 Consents under regulations

- (1) If a transaction is entered into or an instrument is executed without the prior consent of the Minister or the Bank required by any regulations made under this Act, the Minister or the Bank, as the case may be, may, at any time, consent to the entry into the transaction or the execution of the instrument.
- (2) Subject to the terms of the consent, any transaction, or instrument, and any relationship, or interests created by it, which would be invalid or unenforceable without that consent, shall, on the giving of that consent, be valid or enforceable as if the consent had been given before the transaction was entered into or the instrument executed.
- (3) Consent may be given—
 - (a) In respect of such transactions, instruments, or persons or classes of transactions, instruments, or persons as the

- Minister or the Bank may determine, or in respect of any specified transaction, instrument, or person:
- (b) Wholly or partly and either unconditionally or subject to such conditions as the Minister or the Bank thinks fit.
- (4) A consent to the entry into any transaction or the execution of any instrument shall be deemed to be a consent given under the regulations requiring consent.

Compare: 1964 No 134 s 50A; 1968 No 135 s 3; 1970 No 2 s 3

175 Offences against regulations

- (1) Every person commits an offence against this Act who—
- (a) With intent to deceive, makes any false or misleading statement or any material omission in—
 - (i) Any offer or declaration made for the purposes of any regulations under this Act; or
 - (ii) Any communication with, or application to, the Minister or the Bank or any other person (whether in writing or otherwise) for the purposes of those regulations:
 - (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any such regulations:
 - (c) Without lawful excuse, acts in contravention of, or fails to comply in any respect with, any provision of any such regulations or any direction, notice, requirement, or condition given or imposed under any such regulations.
- (2) Nothing in subsection (1) of this section limits section 173(j) of this Act.

Compare: 1964 No 134 s 51

175A Privilege against self-incrimination no excuse

A person is not excused from answering any question, supplying any information, producing any document, or providing any explanation under this Act on the ground that to do so would or might incriminate or tend to incriminate that person.

Sections 175A and 175B were inserted, as from 21 August 2003, by section 44 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

175B 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, or supplying any information, or producing any document, or providing any explanation, 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, supply any information, produce any document, provide any explanation, 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 that refusal or failure:
 - (b) the answering of any question in a way that is false or misleading in a material particular, or the supply of any information, or the production of any document, or the provision of any explanation 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.

Sections 175A and 175B were inserted, as from 21 August 2003, by section 44 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). See sections 49 to 52 of that Act as to the transitional provisions.

176 Penalties for offences

Every person who commits an offence against this Act for which no penalty is provided except in this section is liable on summary conviction—

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$10,000:
- (b) In the case of a body corporate, to a fine not exceeding \$25,000.

Compare: 1964 No 134 s 52(1); 1977 No 68 s 7(1)

Section 176 was amended, as from 24 March 1995, by section 10 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5) by substituting the words “summary conviction” for the words “conviction on indictment”.

177 Time limit for prosecutions

Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against this Act may be laid,—

- (a) in the case of an offence against section 28 or section 30, within 3 years from the time when the matter of the information arose; or
- (b) in any other case, within 6 years from the time when the matter of the information arose.

Section 177 was substituted, as from 21 August 2003, by section 45 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

178 Evidence

- (1) A copy of a resolution of the Bank certified by the Governor to be correct shall, in the absence of proof to the contrary, be sufficient evidence of the resolution in any proceedings.
- (2) A certificate signed by the Governor to the effect that—
 - (a) Any approval or consent required under any Act has or has not been given by the Bank, or is or is not for the time being in force; or
 - (b) Any document has been duly signed by, or on behalf of, the Bank or the Governor—shall, in the absence of proof to the contrary, be sufficient evidence of the matters stated in it in any proceedings.
- (3) Any certificate purporting to have been signed by the Governor shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly signed by the Governor.

Compare: 1964 No 134 s 52B; 1977 No 68 s 8

179 Protection from liability

- (1) This section applies to—
 - (a) every statutory manager of a registered bank or of an associated person of a registered bank; and
 - (b) every officer or employee of the Bank; and
 - (c) every person appointed under section 66E or section 99 or section 101; and
 - (d) every director of the Bank.
- (2) No person to whom this section applies is personally liable for an act done or omitted to be done in the exercise or perform-

ance in good faith of that person's functions, duties, or powers under this Act.

Section 179 was substituted, as from 21 August 2003, by section 46 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (1)(c) was amended, as from 1 November 2006, by section 9 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51) by adding the expression “; and”

Subsection (1)(d) was inserted, as from 1 November 2006, by section 9 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

179A Indemnity

- (1) The Crown indemnifies the persons listed in subsection (2) for any liability that arises from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.
- (2) The persons are—
 - (a) every statutory manager of a registered bank or of an associated person of a registered bank:
 - (b) every officer or employee of the Bank:
 - (c) every person appointed under section 66E or section 99 or section 101:
 - (d) every member of an advisory committee:
 - (e) the Bank:
 - (f) every director of the Bank.
- (3) Any money required for the purposes of this section must be paid out of the Crown Bank Account without further appropriation than this section.
- (4) The indemnity conferred by subsection (1) extends to legal costs incurred in defending a proceeding.
- (5) Within 12 sitting days of the making of any payment under this section, the Minister must present to the House of Representatives a report which contains details of the circumstances giving rise to the liability of the Crown, the amount of the payment, the person to whom the payment was made and any other relevant matters.

Section 179A was inserted, as from 21 August 2003, by section 47 Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46). *See* sections 49 to 52 of that Act as to the transitional provisions.

Subsection (2)(f) was inserted, as from 1 November 2006, by section 10 Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

180 Amendment to Income Tax Act 1976

[Repealed]

Section 180 was repealed, as from 1 April 1995, by section YB 3(1) of the Income Tax Amendment Act 1994 (1994 No 164). *See* section YB 5 of that Act for the transitional provisions.

181 Amendments to Securities Act 1978

(1)

(2)

(3)

(4)

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(10)

(11) Section 48 of the Securities Amendment Act 1988 is hereby consequentially repealed.

Subsection (1) was repealed, as from 1 October 1997, by section 6(6) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act for transitional provisions relating to its application.

Subsection (2) expired, as from 31 March 1990 pursuant to subsection (3) of this section.

Subsections (3), (4) and (5) were repealed, as from 1 October 1997, by section 6(6) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act for transitional provisions relating to its application.

Subsection (6) expired as from the close of 30 June 1996. *See* clause 2 Reserve Bank of New Zealand Act Commencement Order 1995 (SR 1995/249).

Subsection (7) was repealed, as from 1 October 1997, by section 6(6) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act for transitional provisions relating to its application.

Subsection (8) was substituted by section 11 Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5). *See* clause 3 Reserve Bank of New Zealand Act Commencement Order 1995 (SR 1995/249) as to the new subsection (8) coming into force as from 1 July 1996.

Subsection (8) was repealed, as from 1 October 1997, by section 6(6) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act as to transitional provisions relating to its application.

Subsection (9) was repealed, as from 1 October 1997, by section 6(6) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act as to transitional provisions relating to its application.

Subsection (10) was repealed, as from 1 October 1997, by section 16(2)(b) Securities Amendment Act 1996 (1996 No 100). *See* section 2 of that Act as to transitional provisions relating to its application.

182 Amendments to Superannuation Schemes Act 1989

The Superannuation Schemes Act 1989 is hereby amended—

- (a) By omitting from Schedule 3 the item relating to the Securities Act 1978; and
- (b) By omitting from Schedule 4 the item relating to the Securities Act 1978.

183 Amendments to Trustee Banks Restructuring Act 1988

[Repealed]

Section 183 was repealed, as from 21 May 1999, by section 5 Trustee Banks Restructuring Act Repeal Act 1999 (1999 No 53).

184 Amendment to Securities Amendment Act 1988

The Securities Amendment Act 1988 is hereby amended by inserting after section 6, the following section:

“6A Application of Part I to Reserve Bank of New Zealand

Nothing in section 7 or section 11 of this Act applies to the purchase or sale by the Reserve Bank of New Zealand of securities issued by the Reserve Bank of New Zealand or by the Crown.”

185 Consequential amendments

The enactments listed in Schedule 1 to this Act are hereby amended in the manner indicated in that Schedule.

186 Repeals and savings

- (1) The enactments listed in Schedule 2 to this Act are hereby repealed.
- (2) The regulations and the proclamation specified in Schedule 2 to this Act are hereby revoked.

- (3) Without limiting the Acts Interpretation Act 1924, the repeal of those enactments does not affect any document made or any thing done under any of the provisions of those enactments, and every document or thing subsisting or in force at the commencement of this Act shall continue to have effect as if it had been made or done under this Act.

(4)

Subsection (4) was repealed, as from 1 July 1994, by section 63 Companies Amendment Act 1993 (1993 No 108).

187 References to trading banks to be read as references to registered banks

Every reference in any other Act to the expression **trading bank** shall be read as a reference to a registered bank.

Compare: 1986 No 131 s 15

188 Savings

- (1) Notwithstanding the repeal, by section 186 of this Act, of the Reserve Bank of New Zealand Act 1964,—
- (a) The provisions of that Act, and in particular Part 5C of that Act, shall continue in force and apply to any person that was, immediately before the commencement of this Act, subject to statutory management under that Act, in all respects as if they had not been repealed; and
- (b) Any person empowered under that Act to exercise any power or function in respect of any such person shall continue to have, in respect of that person, the same powers and functions that he or she had before the repeal of that Act.
- (2) This section shall apply unless an Order in Council has been made in respect of that person pursuant to section 189 of this Act.

189 Procedure for applying this Act to persons subject to statutory management under Reserve Bank of New Zealand Act 1964

- (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 any person that is subject to statutory management under the Reserve Bank of New Zealand Act 1964 shall become subject to statutory management under this Act:
 - (b) Provide in that order or in any subsequent Order in Council, such transitional provisions as are necessary for giving effect to any such declaration.
- (2) Where any such order is made, the following provisions shall apply on and after the commencement of the order:
 - (a) The Reserve Bank of New Zealand Act 1964 shall cease to apply to that person; and
 - (b) Any person who holds office as a statutory manager of that person under the Reserve Bank of New Zealand Act 1964 shall be deemed to have been appointed as statutory manager of that person under this Act; and
 - (c) Any such statutory manager shall have in respect of that person all the powers, rights, authorities, and privileges conferred by this Act on a statutory manager; and
 - (d) Any advisory committee appointed under section 38S of the Reserve Bank of New Zealand Act 1964 shall be deemed to have been appointed under this Act.

190 Transitional provisions in relation to Part 5A and Part 5C of Reserve Bank of New Zealand Act 1964

- (1) Subject to subsection (2) of this section, Part 5C of the Reserve Bank of New Zealand Act 1964 (as substituted by section 10 of the Reserve Bank of New Zealand Amendment Act 1986) shall, notwithstanding the repeal of that Act, continue in force and apply for a period of 12 months from and after the commencement of this Act to every person that was, immediately before the commencement of this Act, a specified institution within the meaning of section 38K of that Act.
- (2) Any application for registration as a registered bank, made under section 38C of the Reserve Bank of New Zealand Act 1964 (as inserted by section 10 of the Reserve Bank of New Zealand Amendment Act 1986) and not determined before the commencement of this Act shall be determined under this Act.
- (3) Nothing in subsection (1) of this section applies to:
 - (a) A registered bank:

- (b) A person that is exempted from the application of that subsection by the Bank by notice in the *Gazette*.

191 Transitional provisions in relation to office holders

- (1) The person holding office at the commencement of this Act as Governor of the Bank shall be deemed to have been appointed under section 40 of this Act for the balance of the term for which that person was appointed.
- (2) The person holding office at the commencement of this Act as Deputy Governor of the Bank shall be deemed to have been appointed under section 43 of this Act for the balance of the term for which that person was appointed.
- (3) Any other person holding office as a director of the Bank immediately before the commencement of this Act shall vacate office on the commencement of this Act.
- (4) No director of the Bank who vacates office under subsection (3) of this section is entitled to compensation for loss of office as a director.
- (5) Nothing in subsection (3) of this section prevents a person who vacates office under that subsection from being appointed under section 54 of this Act as a director of the Bank.

192 Transitional provision in relation to accounts of Bank

The provisions of sections 40 to 45 and section 46 of the Reserve Bank of New Zealand Act 1964 shall, notwithstanding the repeal of that Act by section 186(1) of this Act, continue in force in relation to the financial year of the Bank ending on the 31st day of March 1990.

Schedule 1
Enactments amended

Section 185

Title of Enactment	Amendment
1961, No 3-The International Finance Agreements Act 1961. (RS Vol 16, p 207)	By repealing section 4(2) (as added by section 4 of the International Finance Agreements Amendment Act 1976), and substituting the following subsection: “(2) The Reserve Bank of New Zealand shall have power from time to time to acquire, hold, and deal with special drawing rights in accordance with the Fund Agreement; and, without limiting the generality of the expression foreign exchange in the Reserve Bank of New Zealand Act 1989, special drawing rights shall be deemed to be foreign exchange for the purposes of that Act.
1971, No 51-The Stamp and Cheque Duties Act 1971	By repealing paragraph (q) of section 11(2) (as added by section 14 of the Reserves Bank of New Zealand Amendment Act 1986), and substituting the following paragraph: “(q) Paragraph (c) of subsection (2) of section 38AE of the Reserve Bank of New Zealand Act 1964 or

Title of Enactment	Amendment
	paragraph (c) of subsection (2) of section 132 of the Reserve Bank of New Zealand Act 1989:
1973, No 14-The Overseas Investment Act 1973	By repealing section 13, and substituting the following section: “13 Services for Commission The Commission may enter into an agreement with the Reserve Bank or any other person for the provision of secretarial and clerical services.
1989, No 11-The Corporations (Investigation and Management) Act 1989	By repealing section 8 and substituting the following section: “8 Consultation with Reserve Bank “(1) For the purposes of this section— “Registered bank means a registered bank within the meaning of section 2 of the Reserves Bank of New Zealand Act 1989 “Specified institution means a person that continues to be subject to Part 5C of the Reserve Bank of New Zealand Act 1964 by virtue of section 190 of

Title of Enactment	Amendment
	<p>the Reserve Bank of New Zealand Act 1989.</p> <p>“(2) The Registrar shall consult with the Reserve Bank before-</p> <p>“(a) Giving a written notice requiring any registered bank or specified institution to supply any information under section 9 of this Act:</p> <p>“(b) Appointing any person to carry out an investigation of the affairs of any registered bank or specified institution under section 19 of this Act:</p> <p>“(c) Giving a written notice to any registered bank or specified institution that it is considered to be a corporation at risk.</p> <p>“(3) The Securities Commission shall consult with the Reserve Bank before making a recommendation to the Minister under section 38 of this Act in respect of any registered bank or specified institution.</p>

An item relating to the Housing Corporation Act 1974 was repealed, as from 1 July 2001, by section 25(1)(c) Housing Corporation Amendment Act 2001 (2001 No 37).

Schedule 2

Enactments repealed

Section 186(1)

- 1964, No 27—The Decimal Currency Act 1964: The definitions of the terms **approved machine**, **board**, and **prescribed** in section 2(1); Parts 3, 4, and 5 and the Schedule. (RS Vol 2, p 277.)
- 1964, No 134—The Reserve Bank of New Zealand Act 1964. (RS Vol 16, p 455.)
- 1965, No 124—The Decimal Currency Amendment Act 1965: The definition of the term **transitional period** in section 3; sections 4, 5, 8, and 14(2) and Schedule 1. (RS Vol 2, p 294.)
- 1967, No 3—The Decimal Currency Amendment Act 1967: Sections 2, 3, 4, and 7. (RS Vol 2, p 301.)
- 1968, No 135—The Reserve Bank of New Zealand Amendment Act 1968. (RS Vol 16, p 509.)
- 1970, No 2—The Reserve Bank of New Zealand Amendment Act 1970. (RS Vol 16, p 510.)
- 1971, No 125—The Reserve Bank of New Zealand Amendment Act 1971. (RS Vol 15, p 510.)
- 1973, No 56—The Decimal Currency Amendment Act 1973. (RS Vol 2, p 302.)
- 1973, No 16—The Reserve Bank of New Zealand Amendment Act 1973. (RS Vol 16, p 511.)
- 1974, No 118—The Reserve Bank of New Zealand Amendment Act 1974. (RS Vol 16, p 513.)
- 1975, No 19—The Reserve Bank of New Zealand Amendment Act 1975. (RS Vol 16, p 514.)
- 1976, No 25—The International Finance Agreements Amendment Act 1976: Section 4. (RS Vol 16, p 374.)
- 1977, No 68—The Reserve Bank of New Zealand Amendment Act 1977. (RS Vol 16, p 514.)

- 1980, No 138—The Reserve Bank of New Zealand Amendment Act 1980. (RS Vol 16, p 517.)
- 1982, No 168—The Reserve Bank of New Zealand Amendment Act 1982. (RS Vol 16, p 517.)
- 1986, No 131—The Reserve Bank of New Zealand Amendment Act 1986.

Regulations revoked

Title	Statutory Regulations Serial Number
The Exchange Control Regulations 1985	1985/4
The Exchange Control Regulations 1985, Amendment No 7	1986/294
The Exchange Control Regulations 1985, Amendment No 9	1987/60
The Reserve Bank of New Zealand Act (Fees) Regulations 1987	1987/108
The Reserve Bank of New Zealand Amendment Act Commencement Order 1988	1988/77
The Exchange Control Regulations 1985, Amendment No 15	1988/84
The Reserve Bank of New Zealand Order 1988	1988/192

Proclamation revoked

Proclamation	Statutory Regulations Serial Number
The Decimal Currency (End of Transitional Period) Proclamation 1986	1968/86

Contents

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Notes

1 General

This is an eprint of the Reserve Bank of New Zealand Act 1989. It incorporates all the amendments to the Reserve Bank of New Zealand Act 1989 as at 1 November 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Reserve Bank of New Zealand Amendment Act 2007 (2007 No 76)
Companies Amendment Act 2006 (2006 No 56): section 41
