

**Reprint  
as at 10 December 2013**



**Reserve Bank of New Zealand Act  
1989**

Public Act 1989 No 157  
Date of assent 20 December 1989  
Commencement see section 1(2)

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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	<i>[Repealed]</i>	

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### **Title [*Repealed*]**

Title: repealed, on 10 September 2008, by section 4 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **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), this Act shall come into force on 1 February 1990.

Section 1(2): amended, on 24 March 1995, by section 12 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

### **1A Purpose**

- (1) The purpose of this Act is to provide for the Reserve Bank of New Zealand, as the central bank, to be responsible for—
- (a) formulating and implementing monetary policy designed to promote stability in the general level of prices, while recognising the Crown's right to determine economic policy; and
  - (b) promoting the maintenance of a sound and efficient financial system; and
  - (c) carrying out other functions, and exercising powers, specified in this Act.
- (2) This section does not limit the functions or powers given to the Bank by any other enactment.

Section 1A: inserted, on 10 September 2008, by section 5 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **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
- 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 settlement system** has the meaning set out in section 156M

**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

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

**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 1 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) an insurer that issues, or is liable under, life policies within the meaning of section 6(1) of the Insurance

- (Prudential Supervision) Act 2010; and includes any branch, division, or office of that insurer; 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 year** has the meaning given to it by section 157

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

**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 section 5 of the Companies Act 1993

**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 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

**licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

**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  
**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

**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

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

**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; or
  - (iii) any expenses agreed by the Minister and the Bank not to be operating expenses

**operator**, in relation to either a settlement system or a payment system, means any person that provides clearing, settlement, or processing services in respect of that system

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

**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

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

**participant**, in relation to either a settlement system or a payment system,—

- (a) means a person who has agreed to participate in either a settlement system or a payment system in accordance with the rules of that system; and
- (b) in the case of a designated settlement system, includes an operator of the settlement system if the designation under section 156N(3)(b) so provides

**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)

**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

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

**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)

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

**settlement system** has the meaning set out in section 156M

**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

**specified operator** has the meaning set out in section 156M

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

**subsidiary** means a subsidiary within the meaning of section 5(1)(a)(iii) and (b) of the Companies Act 1993

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

**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 re-

- spect 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.
- (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) **banking group**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**Section 2(1) clearing house:** repealed, on 24 November 2009, by section 4(1) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**Section 2(1) designated payment system:** repealed, on 24 November 2009, by section 4(2) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**Section 2(1) designated settlement system:** inserted, on 24 November 2009, by section 4(2) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **director**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**Section 2(1) disclosure statement:** inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **financial institution** paragraph (a): replaced, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 2(1) **financial institution** paragraph (d): amended, on 1 November 2006, by section 4 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

**Section 2(1) financial year:** inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46)

Section 2(1) **FMA**: inserted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

**Section 2(1) holding company:** replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

**Section 2(1) home country supervisor:** inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003

No 46).  
Section 2(1) **home jurisdiction**: inserted, on 21 August 2003, by section 3(1)

of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
**Section 2(1) licensed insurer:** inserted, on 8 September 2010, by section 241(1)

of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).  
**Section 2(1) Minister:** replaced, on 25 June 1997, by section 2 of the Treasurer

(Statutory References) Act 1997 (1997 No 20).  
Section 2(1) **net income**: inserted, on 25 January 2005, by section 37(1) of the

Public Finance Amendment Act 2004 (2004 No 113).

Section 2(1) **New Zealand chief executive officer**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **non-voting security**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **operating expenses**: inserted, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 2(1) **operating expenses** paragraph (b)(ii): amended, on 10 September 2008, by section 6 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 2(1) **operating expenses** paragraph (b)(iii): inserted, on 10 September 2008, by section 6 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 2(1) **operator**: replaced, on 24 November 2009, by section 4(3) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **overseas bank**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **overseas person**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **parent bank**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **participant**: replaced, on 24 November 2009, by section 4(4) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **payment system**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **qualifying interest**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **restricted word**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **settlement system**: inserted, on 24 November 2009, by section 4(5) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **significant influence**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **specified operator**: inserted, on 24 November 2009, by section 4(5) of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 2(1) **specified security**: replaced, on 25 August 2005, by section 75 of the Overseas Investment Act 2005 (2005 No 82).

Section 2(1) **subsidiary**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **trade mark**: inserted, 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(1) **voting right**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

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).

Section 2(1) **voting security**: inserted, on 21 August 2003, by section 3(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(2): replaced, on 21 August 2003, by section 3(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(3): inserted, on 21 August 2003, by section 3(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 2(4): inserted, on 21 August 2003, by section 3(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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), 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.

**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, for such period not exceeding 12 months as shall be specified in the order.
- (2) Notwithstanding anything in section 8, 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).
- (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) 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) 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) 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) remains in force,—
- (a) the policy targets fixed under section 9 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), 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 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, 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), 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 1 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), 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;
  - (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.

Section 15(1): replaced, on 8 August 1990, by section 2 of the Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96).

Section 15(1A): inserted, on 8 August 1990, by section 2 of the Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96).

Section 15(1B): inserted, on 8 August 1990, by section 2 of the Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96).

Section 15(3): replaced, on 25 January 2005, by section 37(1) of the 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 enactment, the Bank may deal in foreign exchange, on such terms and conditions as it thinks fit,—

- (a) with any person, including the Crown; and  
(b) on behalf of any person, including the Crown.

Section 16: replaced, on 10 September 2008, by section 7 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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, 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).

**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, 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).
- (4) The Minister shall not give a direction under subsection (1) 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 would, while not being inconsistent with the economic objective of monetary policy, be inconsistent with achieving the policy targets fixed under section 9, 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) and, in that event, the provisions of section 9(5) 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 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 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 a 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.
- (2) The Minister shall, without further appropriation, pay to the Bank out of a 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.

Section 21(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 21(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**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, di-

rect 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).
- (3) Every notice under subsection (1) 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 must hold and maintain foreign reserves at that level or within those levels.

Section 24(2): replaced, on 10 September 2008, by section 8 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *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 27 s 10; 1964 No 134 s 20(1), (3)

**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 27 s 12; 1964 No 134 s 22

**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) do not include references to coins and bank notes that have been called in.

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

**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) commits an offence against this Act and is liable on conviction to a fine not exceeding \$1,000.

Compare: 1964 No 134 s 23

Section 28(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**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) commits an offence against this Act and shall be liable on conviction,—
- (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.

Section 29(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**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) commits an offence against this Act.
- (3) Where a person is convicted of an offence against subsection (2), 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 Policy advice**

- (1) On request by the Minister, the Bank must provide advice to the Minister on any matter specified in the request that is connected with the functions of the Bank.
- (2) A request may not be made under subsection (1) that may limit the Bank in exercising its primary function in section 8.
- (3) The Bank may also provide advice to the Minister, at any time, on any matters or subjects within the responsibility of the Bank.

Section 33: replaced, on 10 September 2008, by section 9 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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, 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), 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.
- (6) Sections 156G to 156I and 156J(2)(c) and (d) (which relate to the publication or disclosure of information or data supplied to the Bank) apply with all necessary modifications in respect of information and data supplied to the Bank under this section as

if for each reference to section 156C in sections 156G(1) and (3) and 156J(2)(c) there were substituted a reference to section 36.

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

Section 36(6): inserted, on 10 September 2008, by section 10 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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 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 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 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).

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 or the Insurance (Prudential Supervision) Act 2010, 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.

Section 39: amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

## **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—
  - (a) this Act; and
  - (b) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
  - (c) the Insurance (Prudential Supervision) Act 2010.
- (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, or either of the following Acts, required to be dealt with by the Board:
  - (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
  - (b) the Insurance (Prudential Supervision) Act 2010.

Section 41: replaced, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

**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) 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 of a deposit taker as defined in section 157C or of a licensed insurer; 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) *[Repealed]*
  - (i) *[Repealed]*
  - (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.
  - (k) *[Repealed]*
- (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.

Section 46(1)(b): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 46(1)(b): amended, on 10 September 2008, by section 11 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 46(1)(d): amended, on 25 January 2005, by section 19(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 46(1)(h): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 46(1)(i): repealed, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 46(1)(j): replaced, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 46(1)(j): amended, on 10 September 2008, by section 15(2) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

Section 46(1)(k): repealed, on 10 September 2008, by section 15(3) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

- 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) 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)

Section 47(5): replaced, on 21 August 2003, by section 4 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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), 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) 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) has been inadequate; or
  - (e) that, in a case where section 9(2) or subparagraph (i) or subparagraph (ii) of section 12(7)(b) 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 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); 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 a deposit taker as defined in section 157C or a licensed insurer; 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) that the Governor be removed from office.
- Section 49(2)(h)(iii): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).
- Section 49(2)(h)(iii): amended, on 10 September 2008, by section 12 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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) if the Minister is satisfied that the Deputy Governor—
- (a) *[Repealed]*
  - (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 a deposit taker as defined in section 157C or a licensed insurer; 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.

Section 50(2)(a): repealed, on 21 August 2003, by section 5 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 50(2)(d)(iii): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 50(2)(d)(iii): amended, on 10 September 2008, by section 13 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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).

- (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 or under either of the following Acts, and not by delegation:
    - (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
    - (b) the Insurance (Prudential Supervision) Act 2010.
  - (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.
  - (9) To avoid doubt, the Governor's functions and powers include his or her functions and powers under the following Acts:
    - (a) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009;
    - (b) the Insurance (Prudential Supervision) Act 2010.
- Compare: 1964 No 134 s 18(3), (4)
- Section 51(5): replaced, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 51(9): replaced, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

*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—
    - (i) its primary function; and
    - (ii) its functions relating to promoting the maintenance of a sound and efficient financial system; and
    - (iii) its other functions under this Act or any other enactment;
  - (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);
  - (d) determine whether policy statements made pursuant to section 15 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);
  - (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) has been inadequate; or
- (d) that a policy statement made pursuant to section 15 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); 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 a deposit taker as defined in section 157C or a licensed insurer; 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.

Section 53(1)(a): replaced, on 10 September 2008, by section 14(1) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 53(3)(f)(iii): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 53(3)(f)(iii): amended, on 10 September 2008, by section 14(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **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: inserted, on 21 August 2003, by section 6 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 53A(3): replaced, on 25 January 2005, by section 37(1) of the 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: replaced, on 21 August 2003, by section 7 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **55 Term of office of non-executive directors**

- (1) Except as provided in subsection (2) and in sections 57 to 59, 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 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.
- (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 a licensed insurer; 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) *[Repealed]*
- (g) *[Repealed]*
- (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) *[Repealed]*

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

Section 58(b): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 58(f): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 58(g): repealed, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 58(h): replaced, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

Section 58(i): repealed, on 10 September 2008, by section 15(4) of the Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64).

## **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) 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: inserted, on 21 August 2003, by section 8 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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: replaced, on 21 August 2003, by section 9 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 60A: inserted, on 21 August 2003, by section 9 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 60B: inserted, on 21 August 2003, by section 9 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 60C: inserted, on 21 August 2003, by section 9 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 61(2): replaced, on 8 August 1990, by section 3 of the 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: replaced, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Limit on use of restricted words in name or title*

Heading: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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).

Section 64: replaced, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 65: replaced, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 66: replaced, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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).

Section 66A: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Limit on use of restricted words in advertisement*

Heading: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66B: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Powers of Bank in relation to use of restricted words*

Heading: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66C: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66D: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 66E: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66F: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66G: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 66H: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **66I Procedure for obtaining warrants**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a warrant to a person appointed under section 66E(2) if the issuing officer is satisfied, on application made in the manner provided in sub-part 3 of Part 4 of that Act, 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).
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 66I: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 66I(1): amended, on 1 October 2012, by section 297(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 66I(2): inserted, on 1 October 2012, by section 297(2) of the Search and Surveillance Act 2012 (2012 No 24).

**66J Effect of warrant**

*[Repealed]*

Section 66J: repealed, on 1 October 2012, by section 297(3) of the Search and Surveillance Act 2012 (2012 No 24).

**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.

Section 66K: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 66L: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Penalty for offences against this Part*

Heading: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**66M Penalty for offences**

- (1) A person who commits an offence against any of the provisions listed in subsection (2) is liable, on 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).

Section 66M: inserted, on 21 August 2003, by section 10 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 66M(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 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: inserted, on 15 December 2006, by section 5 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

#### **67 Registration and prudential supervision**

The Bank shall in accordance with this Part—

- (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 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 or the Insurance (Prudential Supervision) Act 2010, 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: inserted, on 15 December 2006, by section 6 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

Section 68A(1): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

**68B Bank to have regard to directions about government policy objectives**

- (1) The Minister may direct the Bank to have regard to a government policy that relates to the Bank's functions under this Part and Parts 5B to 5D.

- (2) The Bank must have regard to every direction given by the Minister under this section.
- (3) The Minister must consult with the Bank before giving a direction.
- (4) A direction must—
  - (a) be set out in a written statement signed by the Minister; and
  - (b) as soon as practicable after it is given, be—
    - (i) presented to the House of Representatives by the Minister; and
    - (ii) published in the *Gazette*.
- (5) The Minister may not give a direction that requires the performance or non-performance of a particular act by the Bank, or any employee or office holder of the Bank, or the bringing about of a particular result, in respect of a particular person.
- (6) A direction may be amended, revoked, or replaced in the same way as it may be given.

Compare: 2004 No 115 ss 104(1), 113(1)(b), 114, 115(2)

Section 68B: inserted, on 10 September 2008, by section 15 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *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.
- (2A) The register must include—
  - (a) the name of each registered bank; and
  - (b) the current rating of each registered bank under section 80 (if any); and
  - (c) any other prescribed information.
- (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: replaced, on 1 November 2006, by section 7 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

Section 69(2A): inserted, on 4 September 2013, by section 4 of the Reserve Bank of New Zealand Amendment Act 2013 (2013 No 62).

**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

Section 70(4): inserted, on 21 August 2003, by section 11 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 70(5): inserted, on 21 August 2003, by section 11 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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) if—
- (a) a notice has been given to that registered bank under section 99(2)(a); or
  - (b) a person has been appointed under section 99(2)(b) to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
  - (c) a person has been appointed under section 101 to carry out an investigation of the affairs of that registered bank; or
  - (d) a direction is in force under section 113 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); or
  - (b) a person has been appointed under section 99(2)(b) to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
  - (c) a person has been appointed under section 101 to carry out an investigation into the affairs of that registered bank; or
  - (d) a direction is in force under section 113 in relation to that registered bank; or
  - (e) the registered bank is subject to statutory management.

Section 71(3): replaced, on 21 August 2003, by section 12 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(4)(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(4)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(4)(d): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(5)(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(5)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 71(5)(d): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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: replaced, on 21 August 2003, by section 13 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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), 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

Section 73(2): replaced, on 21 August 2003, by section 14 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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.

Section 73A: inserted, on 21 August 2003, by section 15 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 73B: inserted, on 21 August 2003, by section 15 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 74: replaced, on 21 August 2003, by section 16 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## 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) limits any other provisions of this Part.

**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) 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) *[Repealed]*
  - (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) 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

Section 77(1): replaced, on 21 August 2003, by section 17(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(2)(b): replaced, on 21 August 2003, by section 17(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(2)(ba): inserted, on 21 August 2003, by section 17(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(2)(bb): inserted, on 21 August 2003, by section 17(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(2)(d): repealed, on 21 August 2003, by section 17(3)(a) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(2)(g): amended, on 21 August 2003, by section 17(3)(b) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 77(3): replaced, on 24 March 1995, by section 4 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 77(5): replaced, on 21 August 2003, by section 17(4) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 77A: inserted, on 21 August 2003, by section 18 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 77B: inserted, on 21 August 2003, by section 18 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**78 Carrying on business in prudent manner**

- (1) In—

- (a) having regard, under section 73(2)(c), 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) 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).
- (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).
- Section 78(1)(b): amended, on 21 August 2003, by section 19(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 78(1)(fa): inserted, on 21 August 2003, by section 19(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 78(1)(fb): inserted, on 21 August 2003, by section 19(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 78(3): amended, on 24 March 1995, by section 5 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**79 Annual fee**

*[Repealed]*

Section 79: repealed, on 1 January 1996, by section 6(1) of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**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: replaced, on 21 August 2003, by section 20 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*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) An Order in Council made under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 81: replaced, on 21 August 2003, by section 21 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 81(5): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **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;
- (g) incorporate by reference a framework, standard, specification, or requirement that is published by, or on behalf of, any body or person in any country—
- (i) in whole or in part; and
  - (ii) with any modifications, additions, or variations specified in the Order in Council.
- (3) Schedule 3 applies to any material incorporated by reference in an Order in Council made under section 81.

Section 81AA: inserted, on 21 August 2003, by section 21 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 81AA(2)(g): inserted, on 10 September 2008, by section 16(1) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 81AA(3): inserted, on 10 September 2008, by section 16(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **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.

Section 81AB: inserted, on 21 August 2003, by section 21 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 81AC: inserted, on 21 August 2003, by section 21 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**81A Bank to consult**

- (1) Before making a recommendation under section 81(1) (including a recommendation to amend any Order in Council made under that subsection) the Bank must—
  - (a) consult with—
    - (i) the FMA; 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) have a reasonable opportunity to make submissions to the Bank; and
  - (c) have regard to those submissions.
- (2) Failure to comply with subsection (1) does not affect the validity of any Order in Council under section 81(1).
- (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 81A: inserted, on 24 March 1995, by section 7 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 81A(1)(a)(i): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 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: replaced, on 21 August 2003, by section 22 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 83(d): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Advertising by registered banks*  
*[Repealed]*

Heading: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**84 Interpretation***[Repealed]*

Section 84: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**85 Content of advertisements by registered banks***[Repealed]*

Section 85: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**86 Regulations***[Repealed]*

Section 86: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**87 Offence to advertise in contravention of regulations***[Repealed]*

Section 87: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**88 Bank may prohibit advertisements by registered banks***[Repealed]*

Section 88: repealed, on 24 March 1995, by section 8 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

*Provisions applying to disclosure statements*

Heading: replaced, on 24 March 1995, by section 9 of the 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.

Section 89: replaced, on 21 August 2003, by section 23 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 89A: inserted, on 21 August 2003, by section 23 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 89B: inserted, on 21 August 2003, by section 23 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 89C: inserted, on 21 August 2003, by section 23 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**90 Civil liability**

Subject to section 91, 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.

Section 90: replaced, on 24 March 1995, by section 9 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

Section 90(a): replaced, on 21 August 2003, by section 24 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 90(b): replaced, on 21 August 2003, by section 24 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 90(c): inserted, on 21 August 2003, by section 24 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**91    Defences**

A person is not liable under section 90 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.

Section 91: replaced, on 24 March 1995, by section 9 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

**92    Fair Trading Act 1986 not affected**

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

Section 92: replaced, on 24 March 1995, by section 9 of the 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: replaced, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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.

Section 93A: inserted, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 93B: inserted, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 93C: inserted, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 94: replaced, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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 company 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.

Section 95: replaced, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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: inserted, on 21 August 2003, by section 25 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

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

Section 96: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 96(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### 97 Auditor to inform of intention to disclose

Every auditor shall, before disclosing any information to the Bank under section 96, 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

Section 97 heading: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 97: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### 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.
- (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 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*

Heading: inserted, on 21 August 2003, by section 26 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 98A: inserted, on 21 August 2003, by section 26 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 98B: inserted, on 21 August 2003, by section 26 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*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: replaced, on 21 August 2003, by section 27 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## **100 Requirements on entering and searching premises**

- (1) No person appointed pursuant to section 99(2)(b) 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.
- (2) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 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

Section 100(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### *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 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 38O(1); 1986 No 131 s 10; 1989 No 11 s 19

Section 101: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**102 Powers of person appointed to carry out investigation**

- (1) Any person appointed under section 101 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 regis-

- tered 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);
  - (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, any person appointed under section 101 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 38O(2), (4); 1986 No 131 s 10; 1989 No 11 s 21

Section 102(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(1)(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(1)(a)(i): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(1)(a)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(1)(c): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(1A): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(2): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 102(2)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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 in carrying out that investigation; or
  - (b) refuses to answer any question put to him or her under section 102; or
  - (c) supplies any information, or provides an answer to any question, required to be supplied or provided pursuant to section 102 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; 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) 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 38O(11), (12), (13); 1986 No 131 s 10; 1989 No 11 s 20

Section 103(1)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 103(1)(c): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 103(2): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 103(2)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 103(3): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**104 Requirements to be complied with by person carrying out investigation**

- (1) Any person who exercises any powers conferred by section 102(1) shall, if requested, produce the instrument of that person's appointment under section 101.
- (2) No person who exercises any powers conferred by section 102(2) 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.
- (3) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 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 38O(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—under, or for the purposes of, or in connection with the exercise of powers conferred by, this Part:
  - (b) information and data derived from or based upon information, data, and forecasts referred to in paragraph (a);
  - (c) information relating to the exercise, or possible exercise, of the powers conferred by this Part.
- (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, 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;
  - (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 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) 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 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) 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; 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), 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(1)(a)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(2): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(2)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(4): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(7): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(7A): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 105(7B): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## **106 Procedure for obtaining warrants**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who is satisfied, on application made in the manner provided in subpart 3 of Part 4 of that Act, 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 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; 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—  
may issue a warrant, in terms of section 107, to a person appointed pursuant to section 99(2)(b).
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who is satisfied, on an application made in the manner provided in subpart 3 of Part 4 of that Act, 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 that an investigation of the affairs of a registered bank should be carried out, may issue a warrant, in terms of section 107, to a person appointed under section 101.
- (3) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.  
Compare: 1964 No 134 ss 38N(3), (5), 38O(6); 1986 No 131 s 10; 1989 No 11 s 24  
Section 106(1): amended, on 1 October 2012, by section 297(4) of the Search and Surveillance Act 2012 (2012 No 24).  
Section 106(1): amended, on 21 August 2003, by section 28(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(1)(aaa): inserted, on 21 August 2003, by section 28(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(1)(aa): inserted, on 21 August 2003, by section 28(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(1)(ba): inserted, on 21 August 2003, by section 28(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(1)(bb): inserted, on 21 August 2003, by section 28(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(2): amended, on 1 October 2012, by section 297(5) of the Search and Surveillance Act 2012 (2012 No 24).  
Section 106(2): amended, on 21 August 2003, by section 28(4) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).  
Section 106(3): replaced, on 1 October 2012, by section 297(6) of the Search and Surveillance Act 2012 (2012 No 24).

## **107 Effect of warrant**

- (1) Every warrant issued under section 106 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), 38O(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, 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), 38O(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 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.

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

Section 109(a)(i): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 109(a)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 109(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 109(b)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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 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) is destroyed;
  - (ii) any documents produced for inspection pursuant to section 102(1)(a) 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) 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) and no documents or extracts from documents obtained pursuant to an inspection made under section 102(2) 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.

Compare: 1964 No 134 s 38O(15); 1986 No 131 s 10; 1989 No 11 s 28

Section 110(b)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### *Reserve Bank may give directions*

Heading: replaced, on 21 August 2003, by section 29 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **111 Bank may require registered bank to consult [Repealed]**

Section 111: repealed, on 21 August 2003, by section 29 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**112    Bank may give advice and assistance**

*[Repealed]*

Section 112: repealed, on 21 August 2003, by section 29 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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: replaced, on 21 August 2003, by section 30 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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.

Section 113A: inserted, on 21 August 2003, by section 30 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 113B: inserted, on 21 August 2003, by section 30 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**114 Offence to contravene directions**

- (1) Every person commits an offence against this Act who, being a registered bank or associated person, without lawful justifica-

tion or excuse, contravenes, or fails to comply with, a direction under section 113.

- (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.
- (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

Section 114(3): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **115 Offence to disclose giving of direction**

- (1) Subject to subsections (2) and (3), 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) 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) 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

Section 115 heading: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(2): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(2)(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(2)(c)(ii): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(3): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 115(4): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## **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: replaced, on 21 August 2003, by section 31 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*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 1 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 management 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), 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 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).
- (7) Subsections (1)(a) and (2) are subject to section 139J(4).

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

Section 117(1)(b): amended, on 21 August 2003, by section 32(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 117(1A): inserted, on 21 August 2003, by section 32(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 117(2): replaced, on 21 August 2003, by section 32(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 117(2A): inserted, on 21 August 2003, by section 32(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 117(4): inserted, on 26 April 1999, by section 2 of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 117(5): inserted, on 26 April 1999, by section 2 of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 117(6): inserted, on 21 August 2003, by section 32(4) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 117(7): inserted, on 10 December 2013, by section 4 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**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

Section 118(1): replaced, on 21 August 2003, by section 33 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**119 Advisory committee**

- (1) Where an Order in Council is made under section 117 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;
  - (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

Section 119(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 119(4): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 119(5): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 119(6): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 119(8): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 119(9): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## **120 Statutory manager to comply with directions of Bank**

Subject to section 142, 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.

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 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), 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), 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 considers 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
- Section 121(2)(b): replaced, on 21 August 2003, by section 34(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 121(2)(c): inserted, on 21 August 2003, by section 34(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 121(3): inserted, on 21 August 2003, by section 34(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

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

Section 121A: inserted, on 15 December 2006, by section 8 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

**122 Moratorium**

- (1) Where a registered bank is declared under section 117 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) 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, retake 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), 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), a statutory manager may waive the application in whole or in part of that subsection (except paragraph (c)) 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) 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) *[Repealed]*
- (7) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply,—
- (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 settlement 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 settlement 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.

(10) Subsection (1) is subject to section 139J(1) to (3).

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

Section 122(1)(c): replaced, on 1 July 1994, by section 2 of the 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).

Section 122(1)(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 122(1)(g): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 122(5): replaced, on 21 August 2003, by section 35(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 122(6): repealed, on 21 August 2003, by section 35(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 122(7): inserted, on 26 April 1999, by section 3(2) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 122(7): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 122(7)(c): replaced, on 21 August 2003, by section 35(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 122(8): inserted, on 21 August 2003, by section 35(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 122(8): amended, on 24 November 2009, by section 5 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 122(8)(b)(i): amended, on 24 November 2009, by section 5 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 122(9): inserted, on 21 August 2003, by section 35(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 122(10): inserted, on 10 December 2013, by section 5 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**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).
- (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) 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) shall, for the purposes of this Part, 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, 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 ap-

pointed pursuant to that section and the provisions of this Part shall apply accordingly.

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

Section 123 heading: amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 123(1)(a): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 123(1)(b): replaced, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 123(1)(c): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

#### **124 Vesting of property subject to security**

- (1) An order may be made under section 123 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 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) shall prevent the issue of an injunction or the making of any order to prevent any property or assets being removed from New Zealand.
- (4) Subsection (1) is subject to section 139J(1) to (3).

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

Section 126(2): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 126(2A): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 126(4): inserted, on 10 December 2013, by section 6 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**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) 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 257 of the Insolvency Act 2006 or section 156R, as the case may be. However, subsection (1) applies to the payment of the netted balance.
- (5) Subsection (1) is subject to section 139J(1) to (3).
- Compare: 1964 No 134 s 38Y; 1986 No 131 s 10; 1989 No 11 s 44
- Section 127(1): replaced, on 21 August 2003, by section 36(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 127(2): replaced, on 21 August 2003, by section 36(1) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 127(3): amended, on 21 August 2003, by section 36(2) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 127(3): amended, on 26 April 1999, by section 4(1) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).
- Section 127(4): inserted, on 26 April 1999, by section 4(2) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).
- Section 127(4): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).
- Section 127(4): amended, on 21 August 2003, by section 36(3) of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 127(5): inserted, on 10 December 2013, by section 7 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**128 Management of registered bank to vest in statutory manager**

- (1) Subject to this Part, 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.
- (3) Subsection (2) is subject to section 139J(1) to (3).

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

Section 128(1): amended, on 26 April 1999, by section 5 of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 128(3): inserted, on 10 December 2013, by section 8 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**129 Powers of statutory manager**

- (1) Subject to this Part, a statutory manager shall have all such powers, rights, and authorities as may be necessary for the purposes of this Part.
- (2) Without limiting subsection (1), 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), 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

Section 129(3): replaced, on 1 July 1994, by section 2 of the 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, 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, 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, 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), 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);
  - (b) any of the shares of any body corporate formed and registered pursuant to subsection (2)(a);
  - (c) the whole or any substantial part of the business undertaking of any body corporate formed and registered pursuant to subsection (2)(a),—

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)

Section 132(2)(a): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 132(2)(b): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 132(2)(d): amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

**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);
- (b) the sale or other disposition pursuant to section 132(2)(e) 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 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).

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); 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); 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)—

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), 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 that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
  - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the registered bank was declared to be subject to statutory management and that arises 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

Section 134(2): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 134(4): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 134(5): replaced, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 134(6): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 134(6)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 134(6)(c): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

Section 134(7): inserted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

### 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)—
- (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—
- 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 manager 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) 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, 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 2006 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), 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) 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.

Section 136: replaced, on 1 July 1994, by section 2 of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 136(1)(a): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 136(1)(b): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

**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—
  - (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), 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) 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  
Section 138(4): replaced, on 1 July 1994, by section 3 of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).  
Section 138(4): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 139: replaced, on 1 July 1994, by section 4 of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

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).

Section 139(1): amended, on 26 April 1999, by section 6(1) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 139(1)(c): replaced, on 26 April 1999, by section 6(2) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

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

#### *Interpretation relating to covered bonds*

Heading: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **139A Interpretation**

In this section and in sections 139B to 139J, unless the context otherwise requires,—

**cover pool**, in relation to a covered bond programme, means assets that—

- (a) are owned by the relevant covered bond SPV; and  
(b) secure the obligations of that SPV under the covered bond programme

**cover pool monitor** means a person that meets the requirements of section 139I(1)

**covered bond** means a bond, note, or other debt security that has the following features:

- (a) it represents an unsecured obligation of the issuer; and  
(b) the principal and interest owing under the bond, note, or other debt security are guaranteed by a covered bond SPV; and

- (c) the obligations under that guarantee are secured by assets that are owned by that SPV

**covered bond programme** means any programme of covered bonds under which, on the security of a single cover pool, covered bonds may be issued

**covered bond SPV** has the meaning given to it by section 139B

**issuer** has the meaning given to it by section 139C

**own** includes holding a beneficial, or legal, interest or entitlement, and **owned** and **owner** have corresponding meanings

**registered covered bond programme** means a covered bond programme that has been registered under section 139G

**SPV** means a special purpose vehicle.

Section 139A: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **139B Meaning of covered bond SPV**

In sections 139A to 139J, **covered bond SPV** means, in relation to a covered bond programme, a person that—

- (a) is, or will be, the owner of an asset that has been, or will be, sold, assigned, or otherwise transferred to it by, or on behalf of, an issuer or an associated person of an issuer; and
- (b) has granted, or may grant, a security interest in that asset for the benefit of the secured creditors under the covered bond programme; and
- (c) carries on a business of acting as covered bond guarantor under the covered bond programme (including any business incidental to that purpose); and
- (d) (other than as described in paragraph (c)) does not carry on any other kind of business.

Section 139B: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **139C Meaning of issuer**

- (1) For the purposes of sections 139A to 139J, **issuer**—
  - (a) means—

- (i) a registered bank that issues or intends to issue covered bonds, or guarantees such covered bonds;
  - (ii) an entity, or a member of a class of entities, specified in regulations made under section 139F(3)(a) that issues or intends to issue covered bonds, or guarantees such covered bonds; and
- (b) includes a bank referred to in paragraph (a)(i) that—
- (i) has had its registration cancelled under section 77; and
  - (ii) has a registered covered bond programme.
- (2) However, if an issuer (**issuer A**) transfers all of the rights and obligations relating to a covered bond programme to another issuer (**issuer B**), issuer B is, from the time of the transfer, the issuer for the purposes of sections 139A to 139J.
- (3) To avoid doubt, subsection (2) does not affect the rights or obligations of issuer A before the transfer.

Section 139C: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### *Registration of covered bond programmes*

Heading: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### **139D Register of registered covered bond programmes**

- (1) The Bank must keep a public register of registered covered bond programmes.
- (2) The Bank—
- (a) must determine the form and content of the register and may amend that form and content as it considers necessary; and
  - (b) may, based on the assets in, or that may be included in, the relevant cover pool, designate registered covered bond programmes to particular classes of registered covered bond programmes, as specified by the Bank.
- (3) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

- (4) A registered covered bond programme must remain on the register despite—
  - (a) any defects in the registration process; or
  - (b) any failure by an issuer to comply with any of the requirements of section 139H.
- (5) However, despite subsection (4), the Bank may remove a registered covered bond programme from the register—
  - (a) if—
    - (i) all obligations under that programme have been fulfilled; or
    - (ii) the security interest over the cover pool has been enforced; or
    - (iii) the issuer has requested the removal; and
  - (b) if, in all cases, the Bank has received evidence, acceptable to the Bank, that both the relevant bond trustee and security trustee consent to the removal.
- (6) To avoid doubt,—
  - (a) registration occurs at the time and date that the Bank enters the details relating to the covered bond programme on the register;
  - (b) a defect in the registration process of a covered bond programme does not affect a person's ability to enforce his, her, or its rights in relation to that covered bond programme or any covered bond issued under that covered bond programme;
  - (c) the failure of an issuer to register a covered bond programme or to comply with any requirement under section 139H does not affect any other person's ability to enforce his, her, or its rights in relation to that covered bond programme or any covered bond issued under that covered bond programme.

Section 139D: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### **139E Requirement, and application, for registration of covered bond programme**

- (1) Only an issuer may apply to the Bank to register a covered bond programme.
- (2) An application must be—

- (a) made in the manner specified by the Bank; and
  - (b) accompanied by a fee (if any), as determined by the Bank and approved by the Minister by notice in the *Gazette*.
- (3) The issuer must provide the Bank with any information that the Bank requires to enable it to determine the application.
- (4) An issuer must not issue, or permit the issue of, a covered bond other than under a registered covered bond programme.
- (5) An issuer commits an offence if, without lawful justification or excuse, the issuer—
  - (a) issues a covered bond other than under a registered covered bond programme; or
  - (b) permits the issue of a covered bond other than under a registered covered bond programme; or
  - (c) provides information for the purposes of an application that is false or misleading in any material particular.
- (6) The penalty for an offence against this section is set out in section 156AB.

Section 139E: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### **139F Determination of application for registration of covered bond programme**

- (1) The Bank must not register a covered bond programme unless it is satisfied that the requirements set out in subsection (2) are met.
- (2) The requirements are as follows:
- (a) that the cover pool assets are, or will be, owned by an identified covered bond SPV that—
    - (i) is a company (within the meaning given in section 2(1) of the Companies Act 1993); or
    - (ii) is a person or partnership specified in regulations made under subsection (3); and
  - (b) that a cover pool monitor has been appointed; and
  - (c) that a register of cover pool assets will be maintained; and
  - (d) that the covered bond programme specifies, or refers to documents that specify, procedures and internal controls that ensure—

- (i) the up-to-date and accurate keeping of that register; and
  - (ii) that the assets in the cover pool remain consistent with any asset class designation under section 139D(2)(b); and
- (e) that the covered bond programme specifies a test, or tests, to determine, in accordance with any procedures specified in that programme, whether the value of the cover pool assets is at least equal to the principal amount outstanding on the covered bonds; and
  - (f) that the covered bond programme provides for the covered bond SPV to perform, or arrange to have performed on its behalf, the requirements of section 139H(1)(a) and (b)(i)—
    - (i) in the event that any amounts become due and payable by the covered bond SPV under the covered bond programme; and
    - (ii) until the security interest over the cover pool assets has been enforced; and
  - (g) that the issuer is in compliance with all other requirements imposed in relation to covered bonds by, or under,—
    - (i) section 74; or
    - (ii) regulations made under subsection (3).
- (3) 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—
    - (a) specifying entities, or classes of entities, for the purposes of section 139C(1)(a)(ii);
    - (b) specifying persons or partnerships, or classes of persons or partnerships, for the purposes of subsection (2)(a)(ii);
    - (c) prescribing additional requirements for the purposes of subsection (2)(g)(ii);
    - (d) prescribing conditions in relation to the entities, persons, or partnerships referred to in paragraphs (a) and (b).

Section 139F: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**139G Bank must approve or decline application**

- (1) Having considered an application made under section 139E(2), the Bank must either approve or decline the application.
- (2) If the Bank is satisfied that an issuer meets the requirements of section 139F(2), the Bank must approve the application and register the covered bond programme.
- (3) The Bank must otherwise decline the application.
- (4) If the Bank approves the application, it must give its decision to the issuer—
  - (a) in writing; and
  - (b) within 60 working days after receiving all of the information required by the Bank to determine the application.
- (5) If the Bank proposes to decline the application, the Bank must, within 60 working days after receiving all of the information required to determine the application,—
  - (a) give the issuer notice, in writing, of that proposed decision and the reasons for it; and
  - (b) invite the issuer to provide, within 10 working days after the date of the notice, submissions or further information in response to that proposed decision; and
  - (c) take account of any submissions and further information it receives from the issuer; and
  - (d) give its final decision to the issuer—
    - (i) in writing; and
    - (ii) within 5 working days after the expiry of the time specified in paragraph (b) (whether or not the Bank receives any submissions or further information).
- (6) Nothing in this section prevents the Bank and the issuer from agreeing to modify the time limits specified in subsections (4) and (5).

Section 139G: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **139H Requirements relating to registered covered bond programmes**

- (1) Every issuer must, in relation to a registered covered bond programme,—
  - (a) ensure that the test or tests specified in section 139F(2)(e) are carried out at intervals of not more than 12 months and notify the Bank if the result of such test or tests is that the value of the cover pool assets is less than the principal amount outstanding on the covered bonds; and
  - (b) ensure that—
    - (i) a register of cover pool assets is maintained; and
    - (ii) it complies with the procedures and internal controls referred to in section 139F(2)(d); and
  - (c) notify the Bank—
    - (i) of every covered bond issued; and
    - (ii) of any material changes to the registered covered bond programme that would be likely to result in the registered covered bond programme failing to comply with the requirements of section 139F(2); and
    - (iii) if the covered bond programme or the cover pool no longer complies with any asset class designation under section 139D(2)(b); and
  - (d) provide the Bank with any further information it requests in relation to the covered bond programme; and
  - (e) ensure that—
    - (i) the registered covered bond programme complies with the requirements of section 139F(2); and
    - (ii) the reports referred to in section 139I(1)(c)(ii) are provided to any bond trustee and security trustee appointed under the covered bond programme; and
    - (iii) the Bank is provided with a copy of—
      - (A) every report prepared by the cover pool monitor in accordance with section 139I(1)(c)(iii) and (iv); and

- (B) if requested by the Bank, any other report prepared by the cover pool monitor in accordance with section 139I(1)(c)(ii).
- (2) However, if any amounts become due and payable by the covered bond SPV under the covered bond programme,—
- (a) the issuer is not required to comply with subsection (1); and
  - (b) the covered bond SPV must provide the Bank with any information it requests in relation to that covered bond programme.
- (3) If an issuer fails to comply with any of the requirements of subsection (1), the Bank may, by notice in writing to the issuer, require the issuer to take such corrective action as the Bank may specify in the notice.
- (4) An issuer commits an offence if the issuer, without lawful justification or excuse, fails to comply with a notice issued under subsection (3).
- (5) The penalty for an offence against this section is set out in section 156AB.

Section 139H: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### *Cover pool monitor*

Heading: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **139I Cover pool monitor**

- (1) A **cover pool monitor** must be—
- (a) independent of the issuer; and
  - (b) 1 or more of the following:
- (i) a licensed auditor under the Auditor Regulation Act 2011;
  - (ii) (if the issuer ensures that appropriate arrangements are in place to ensure that the functions of the cover pool monitor are performed by, or under the supervision of, a licensed auditor) a registered audit firm under the Auditor Regulation Act 2011;

- (iii) a member of any other class of persons or firms that has been approved by the Bank; and
- (c) required, under its contract of appointment, to—
- (i) assess, at a given point in time, and in accordance with any agreed procedures specified in the covered bond programme,—
    - (A) the arithmetical accuracy of the tests carried out in accordance with section 139H(1)(a); and
    - (B) the issuer's compliance with the requirements of section 139H(1)(b); and
  - (ii) provide the issuer with reports on the matters required under paragraph (c)(i) at intervals of not more than 12 months; and
  - (iii) provide reports at intervals of not more than 3 months if the cover pool monitor is not satisfied—
    - (A) as to the arithmetical accuracy of the tests carried out in accordance with section 139H(1)(a); or
    - (B) that the issuer has complied with the requirements of section 139H(1)(b); and
  - (iv) if subparagraph (iii) applies, continue to provide 3-monthly reports until the cover pool monitor is satisfied that the issuer has remedied those matters; and
  - (v) report on any other matters required by regulations made under subsection (2).
- (2) 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 specifying additional matters that the cover pool monitor must be required to report on, and the information to be provided with such a report, for the purposes of subsection (1)(c)(v).
- (3) For the purposes of this section, **independent** means independent of both the issuer and any associated person of the issuer.
- (4) However, to avoid doubt, a person's appointment as auditor does not affect his, her, or its independence.

Section 139I: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

*Statutory management, etc, of issuer*

Heading: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

**139J Limitation on application of statutory management, etc, provisions to covered bond SPV**

- (1) Subsections (2) and (3) apply in relation to the following provisions:
  - (a) sections 122(1), 126(1), 127(1), and 128(2) of this Act;
  - (b) section 248 of the Companies Act 1993;
  - (c) sections 42(1), 43(1), 44(1), and 45(2) of the Corporations (Investigation and Management) Act 1989.
- (2) Nothing in a provision referred to in subsection (1)—
  - (a) prevents the transfer of the legal title to assets in a cover pool from an issuer to a covered bond SPV;
  - (b) prevents the transfer, under a contract, of any documentation or data relating to assets in a cover pool from the issuer to a covered bond SPV or a person acting on behalf of that SPV;
  - (c) prevents a covered bond SPV, or a person acting on behalf of that SPV, from exercising a power of attorney granted by the issuer in relation to assets in a cover pool;
  - (d) affects the issuer's obligation to pay moneys collected on behalf of, and held on trust for, a covered bond SPV, to that SPV;
  - (e) prevents the enforcement of any of the above rights by, or on behalf of, a covered bond SPV.
- (3) However, subsection (2) applies only if—
  - (a) the covered bond SPV is the owner of the assets in the cover pool; and
  - (b) the covered bond programme is registered under section 139G.
- (4) A covered bond SPV is not—
  - (a) an associated person for the purposes of section 117(1)(a) of this Act, section 38(1)(a) of the Corporations (Investigation and Management) Act 1989, or

- section 170(1)(b) of the Insurance (Prudential Supervision) Act 2010; or
- (b) a subsidiary for the purposes of section 117(2) of this Act, section 38(2) of the Corporations (Investigation and Management) Act 1989, or section 170(2) of the Insurance (Prudential Supervision) Act 2010; or
  - (c) a related company for the purposes of section 271 of the Companies Act 1993.

Section 139J: inserted, on 10 December 2013, by section 9 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

#### *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 appointing 2 or more persons as statutory managers of a registered bank, the order shall state whether the powers conferred by this Part shall be exercised by those persons acting together or may be exercised individually.
- (2) For the purposes of this Part, 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), references in sections 119 to 139 and in sections 141 to 156 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) 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) appointing 2 or more persons as statutory managers, the notice shall state whether the powers conferred by this Part 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
- Section 141(1): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 141(3): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 141(3A): inserted, on 8 April 1992, by section 2 of the Reserve Bank of New Zealand Amendment Act 1992 (1992 No 32).
- Section 141(3A): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 141(4): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).
- Section 141(5): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 141(6): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.
- (2) On any application under subsection (1) 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 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) is terminated by, or as the result of the making of, an Order in Council under section 144(1), 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 heading: amended, on 1 July 1994, pursuant to section 6 of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

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

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

Section 143(3): replaced, 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: inserted, on 21 August 2003, by section 37 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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 may, at any time, request the Bank to make a recommendation under subsection (1).
- (4) Where an Order in Council is made under subsection (1) 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 in relation to the statutory management of that person shall terminate at the specified time.
- (5) For the purposes of subsection (4) **specified time** means,—
- (a) in any case where an Order in Council is made pursuant to subsection (1), 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) 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);
  - (c) the appointment of any person appointed as a member of an advisory committee under section 119 in relation to the statutory management of that subsidiary shall ter-

minate on the date and at the time referred to in paragraph (a).

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

Section 144(2): replaced, on 1 July 1994, by section 7(1) of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 144(4): amended, on 1 July 1994, by section 7(2) of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 144(4)(a): amended, on 26 April 1999, by section 7(a) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(4)(b): amended, on 26 April 1999, by section 7(a) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(4)(c): amended, on 26 April 1999, by section 7(a) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(5): amended, on 26 April 1999, by section 7(b) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(5)(a): amended, on 26 April 1999, by section 7(c) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(5)(b): replaced, on 1 July 1994, by section 7(3) of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 144(5)(b): amended, on 26 April 1999, by section 7(c) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(6)(a): amended, on 26 April 1999, by section 7(d) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(6)(b): amended, on 26 April 1999, by section 7(e) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

Section 144(6)(c): amended, on 26 April 1999, by section 7(e) of the Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22).

#### **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: replaced, on 21 August 2003, by section 38 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**146 Indemnity**

*[Repealed]*

Section 146: repealed, on 21 August 2003, by section 39 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

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

Except as otherwise provided in this Part, 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 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 (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(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 148(2): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 148(3): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**149 Advances to statutory manager and members of advisory committee**

- (1) With the consent of the Minister, there may be advanced out of a 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 a Crown Bank Account.

Compare: 1989 No 11 s 66

Section 149(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 149(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**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), that person commits an offence against this Act.
- (3) If any person fails to comply with subsection (1), the statutory manager may, at any time, certify the failure to the court (whether or not an offence has been committed under subsection (2)), 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

Section 150(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 150(2): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 150(5): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### **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, 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
- Section 151(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 151(1)(b): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 151(1A): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

## **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 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.
- (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) 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) 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), 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) *[Repealed]*
- (3) *[Repealed]*
- (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), 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: replaced, on 1 July 1994, by section 9 of the Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118).

Section 153(1): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 153(2): repealed, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 153(3): repealed, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 153(4): amended, on 18 June 2007, by section 17 of the Companies Amendment Act (No 2) 2006 (2006 No 62).

Section 153(8): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 153(9): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 154(1): replaced, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 154(4): amended, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 154(4): amended, on 1 January 2002, by section 70(1) of the Human Rights Amendment Act 2001 (2001 No 96).

Section 154(8): inserted, on 21 August 2003, by section 41 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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 statement of financial position and statement of financial performance 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 statement of financial position, and the consolidated statement of assets and liabilities, shall each be signed by the statutory manager.
- (3) The accounts specified in subsection (1) shall be audited and reported on by the auditor.

Section 155(1)(a): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Section 155(1)(a): amended, on 1 October 1997, pursuant to section 6(2) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Section 155(2): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

**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*

Heading: inserted, on 21 August 2003, by section 40 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**156AA Penalty for miscellaneous offences**

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on 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).

Section 156AA: inserted, on 21 August 2003, by section 40 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 156AA(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **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 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 information 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);
  - (g) section 139E(5)(a) (which relates to issuing a covered bond other than under a registered covered bond programme);

- (h) section 139E(5)(b) (which relates to permitting the issue of a covered bond other than under a registered covered bond programme);
- (i) section 139E(5)(c) (which relates to providing false or misleading information to the Bank in relation to an application to register a covered bond programme);
- (j) section 139H(4) (which relates to failing to comply with a notice issued by the Bank in relation to the requirements relating to a registered covered bond programme).

Section 156AB: inserted, on 21 August 2003, by section 40 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 156AB(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 156AB(2)(g): inserted, on 10 December 2013, by section 10 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 156AB(2)(h): inserted, on 10 December 2013, by section 10 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 156AB(2)(i): inserted, on 10 December 2013, by section 10 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

Section 156AB(2)(j): inserted, on 10 December 2013, by section 10 of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103).

### **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 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 registered 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 9C(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).

Section 156AC: inserted, on 21 August 2003, by section 40 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 156AC(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## Part 5A

### Retention of documents by banks

Part 5A: inserted, on 30 June 1995, by section 2 of the 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), 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), 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), 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),—
- (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) 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), 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); 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).
- (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: inserted, on 30 June 1995, by section 2 of the Reserve Bank of New Zealand Amendment Act (No 2) 1995 (1995 No 34).

Section 156A(4)(b): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

## **Part 5B**

### **Oversight of payment systems**

Part 5B: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### *General*

Heading: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 156B: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Supply of information relating to payment systems*

Heading: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 156C: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 156D: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 156E: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 156F: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

*Disclosure of information relating to payment systems*

Heading: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

**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.

Section 156G: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 156H: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 156I: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### *Penalties for offences against this Part*

Heading: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **156J Penalties for offences**

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on 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).

Section 156J: inserted, on 21 August 2003, by section 42 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 156J(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **Part 5C** **Designated settlement systems**

Part 5C: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### *General*

Heading: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### **156K Exercise of powers under this Part**

- (1) The powers conferred on 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; and
  - (b) avoiding significant damage to the financial system that could result from the failure of a participant in a settlement system.
- (2) The powers conferred on the Minister responsible for the Securities Act 1978 and the FMA by this Part must be exercised for the purposes of—
  - (a) promoting the integrity and effectiveness of settlement systems and related markets in New Zealand; and
  - (b) enhancing the confidence of investors and other market participants in settlement systems and related markets in New Zealand.

- (3) The Governor-General must exercise the powers conferred on him or her by this Part for the purposes set out in subsections (1) and (2).

Section 156K: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156K(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **156L Limit on FMA's powers in relation to Bank**

For the purposes of this Part, the FMA may exercise its powers under subpart 1 of Part 3 of the Financial Markets Authority Act 2011 in relation to the Bank only if, and to the extent that, the Bank is—

- (a) a participant in a settlement system; or
- (b) an operator of a settlement system.

Section 156L: replaced, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### *Designation* *[Repealed]*

Heading: repealed, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### **156M Definitions for this Part**

- (1) In this Part, unless the context otherwise requires,—  
**contact person**, in relation to a settlement system, means the person specified under section 156N(2)(d)  
**designated settlement system** means a settlement system that is declared to be a designated settlement system under section 156N

**joint regulators** means—

- (a) the Bank; and
- (b) the FMA

**Minister responsible for the Securities Act 1978** means the 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 the Securities Act 1978

**netted balance** means any amount calculated in accordance with the netting provisions of the rules of a designated settle-

ment system as the net debit payable by, or on behalf of, a participant in the designated settlement 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 settlement system that results from the issue and receipt of settlement instructions involving 2 or more participants in the settlement system or that is otherwise provided for under the rules of the settlement system,—

- (a) whether on a bilateral or multilateral basis; and
- (b) whether or not through the interposition of an operator of the settlement system (whether by novation or otherwise); 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

**property** means personal property

**pure payment system** means a designated settlement system that is a payment system that is declared to be a pure payment system in accordance with section 156N(3)(d)

**rules,—**

- (a) in relation to a settlement system, means the rules of the settlement 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 settlement instructions are given or received; and
  - (ii) the basis on which settlement obligations are determined and calculated (either on a gross basis or using netting); 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 settlement 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 settlement system;
  - (B) another participant in the settlement system;
  - (C) any other party to those rules; and
- (b) in relation to a designated settlement system, means the rules of that settlement system that are contained in documents specified in the designation under section 156N; and includes any amendments to those rules that have—
- (i) been notified, not been disallowed, and come into effect in accordance with the processes and the time frames set out in sections 156ZB and 156ZC; or
  - (ii) been made pursuant to a variation of a designation under section 156ZD

**settlement** means—

- (a) the making of a payment or the transfer of the title to, or an interest in, property—
  - (i) that is done in accordance with, or to give effect to, a settlement 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 an operator of a settlement system or otherwise; or
- (b) any other act that discharges an obligation to make a payment or transfer the title to, or an interest in, property in accordance with the rules of a settlement system

**settlement instruction** means an instruction by a participant in, or to an operator of, a settlement system—

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

**settlement system**—

- (a) means a system or arrangement for effecting settlements or processing settlement instructions in accordance with rules; and
- (b) includes a payment system

**specified operator** means the operator of a settlement system specified in an Order in Council in accordance with section 156N(2)(c).

- (2) In this Part, a participant **becomes subject to an insolvency event** on the date on which, and (if specified) the time at which,—
- (a) in the case of a company or other body corporate,—
    - (i) a liquidator is appointed in respect of a liquidation under Part 16 of the Companies Act 1993 or under any other Act; or
    - (ii) an administrator is appointed in respect of a voluntary administration under Part 15A of the Companies Act 1993; or
    - (iii) a liquidator is appointed in respect of a liquidation of an overseas company under section 342 of the Companies Act 1993; or
    - (iv) a statutory manager is appointed in respect of a statutory management under Part 3 of the Corporations (Investigation and Management) Act 1989; or
    - (v) a statutory manager is appointed in respect of a statutory management under Part 5 of this Act; or
    - (vi) a person is appointed in respect of, or another event occurs that indicates the start of, a process in New Zealand or in any other country in which the company or other body corporate was incorporated, created, or established that is similar to those set out in subparagraphs (i) to (v); and
  - (b) in the case of an individual,—
    - (i) a person is adjudicated bankrupt under the Insolvency Act 2006 or is given, or determined to have, a similar status (whether in New Zealand or in another country); or
    - (ii) a person is admitted to the no asset procedure in subpart 4 of Part 5 of the Insolvency Act 2006 or becomes subject to a similar procedure (whether in New Zealand or in another country).

Section 156M: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156M(1) **Commission**: repealed, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

Section 156M(1) **joint regulators** paragraph (b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### *Designation*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

## **156N Designation of settlement system**

- (1) The Governor-General may, by Order in Council, on the advice of both the Minister and the Minister responsible for the Securities Act 1978 given in accordance with a joint recommendation of the joint regulators, declare any settlement system to be a designated settlement system.
- (2) The order must specify—
  - (a) the settlement system that is the subject of the designation; and
  - (b) the documents that evidence the rules of that settlement system; and
  - (c) which operator of the settlement system is the specified operator; and
  - (d) the name or title of the person to whom notices relating to that settlement system must be given (the **contact person**).
- (3) The order may also specify all or any of the following:
  - (a) conditions to which the designation is subject;
  - (b) that a particular operator is a participant in the settlement system that is the subject of the designation;
  - (c) that the operator specified in accordance with subsection (2)(c) is an operator to whom section 103A of the Personal Property Securities Act 1999 applies;
  - (d) that the settlement system that is the subject of the designation is a pure payment system.
- (4) Both of the joint regulators must, as soon as practicable after a settlement system has been declared to be a designated settlement system, post on their respective Internet sites the contact details and the name or title of the contact person of that designated settlement system.

- (5) However, the FMA does not have to comply with subsection (4) if a settlement system is specified to be a pure payment system in accordance with subsection (3)(d).
- (6) To avoid doubt,—
  - (a) rules are neither legislative instruments nor disallowable instruments for the purposes of the Legislation Act 2012 (and do not have to be presented to the House of Representatives under section 41 of that Act); and
  - (b) a breach of a condition to which the designation of a settlement system is subject does not affect the application of section 156Q, 156R, 156T, or 156X of this Act or section 103A of the Personal Property Securities Act 1999.

Section 156N: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156N(5): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 156N(6)(a): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

*Effect of designation*  
*[Repealed]*

Heading: repealed, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156O Joint regulators' recommendations subject to procedure in sections 156Y to 156ZA**

The procedure set out in sections 156Y to 156ZA must be followed by the joint regulators when they make a recommendation under section 156N(1).

Section 156O: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

*Effect of designation*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156P Application of this Part to pure payment systems**

- (1) If a designated settlement system is specified to be a pure payment system in accordance with section 156N(3)(d), then this Part applies to that designated settlement system as follows:
  - (a) all references to a settlement must be read as if they were references to a settlement as defined in subsection (4); and
  - (b) for the purposes of sections 156K, 156M, and 156ZB to 156ZQ, the Bank is the sole regulator of that settlement system; and
  - (c) all references to the joint regulators in sections 156K, 156M, and 156ZB to 156ZQ must be read as if they were references to the Bank; and
  - (d) anything in sections 156K, 156M, and 156ZB to 156ZQ that may or must be done by both of the joint regulators may or must be done by the Bank alone; and
  - (e) except as set out in subsection (2), in performing its functions and duties and exercising its powers under sections 156K, 156M, and 156ZB to 156ZQ, the Bank does not have to consult with, advise, or give notice to, the FMA; and
  - (f) section 156L does not apply; and
  - (g) the advice of the Minister responsible for the Securities Act 1978 is not required under section 156ZD or 156ZE; and
  - (h) this Part must be interpreted with all necessary modifications in order to give effect to this section.
- (2) However, if the Bank intends to recommend, in accordance with section 156ZD (applied as set out in subsection (1)), that a designated settlement system's designation is varied so that it is no longer specified to be a pure payment system, the Bank must consult with the FMA before making that recommendation.
- (3) This section ceases to apply to a designated settlement system if, in accordance with section 156ZD (applied as set out in subsection (1)), that settlement system's designation is varied so that it is no longer specified to be a pure payment system.
- (4) For the purposes of subsection (1)(a), **settlement** means—
  - (a) the making of a payment—

- (i) that is done in accordance with, or to give effect to, a settlement 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 an operator of a settlement system or otherwise; or
- (b) any other act that discharges an obligation to make a payment in accordance with the rules of a settlement system.

Section 156P: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156P(1)(e): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 156P(2): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

#### **156Q Rules of designated settlement system are valid and enforceable**

- (1) The rules of a designated settlement 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 settlement instructions are given or received; and
  - (b) the basis on which settlement obligations are determined and calculated (either on a gross basis or using netting); 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 settlement system is unable, or likely to become unable, to meet the participant's obligations to any or all of the following:
    - (i) the specified operator of the designated settlement system;
    - (ii) another participant in the designated settlement system;
    - (iii) any other party to those rules.

Section 156Q: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156R Settlements must not be reversed, etc**

- (1) A settlement that is effected in accordance with the rules of a designated settlement 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 foreign court, foreign representative, or foreign creditor to reverse, repay, recover, or set aside a settlement (whether in whole or in part) that relates to an insolvency (in any form, whether personal or corporate) that is within the jurisdiction of the relevant foreign court, foreign representative, or foreign creditor.
- (3) In this section,—

**foreign court** means a judicial or other authority competent to control or supervise a foreign proceeding

**foreign proceeding** means a collective judicial or administrative proceeding in a foreign jurisdiction, including an interim proceeding, under a law relating to insolvency (in any form, whether personal or corporate), in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation

**foreign representative** means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

Compare: 2006 No 57 Schedule 1 Article 2

Section 156R: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156S Limits on application of section 156R(1)**

- (1) Section 156R(1) does not apply to a settlement that is effected in accordance with the rules of a designated settlement system if—
  - (a) a participant in the designated settlement system in respect of whom the settlement is effected becomes subject to an insolvency event (the **insolvent participant**); and

- (b) the settlement is effected after the insolvent participant becomes subject to an insolvency event.
- (2) Despite subsection (1), section 156R(1) applies to the settlement if—
- (a) the settlement is effected within 24 hours after the insolvent participant becomes subject to an insolvency event; or
  - (b) the settlement instruction that gives rise to the settlement is duly authorised on behalf of the insolvent participant after the insolvent participant becomes subject to an insolvency event.
- (3) For the purposes of subsection (2), **authorised on behalf of the insolvent participant** means authorised (either individually or as part of a broader authorisation) by—
- (a) a liquidator appointed under Part 16 of the Companies Act 1993 or under any other Act; or
  - (b) an administrator appointed in accordance with subpart 2 of Part 15A of the Companies Act 1993; or
  - (c) a statutory manager appointed in accordance with section 38 of the Corporations (Investigation and Management) Act 1989; or
  - (d) a statutory manager appointed in accordance with section 117 of this Act; or
  - (e) a person who performs a role similar to those set out in paragraphs (a) to (d) in respect of a process in New Zealand or in any other country in which the insolvent participant was incorporated, created, or established that is similar to those set out in section 156M(2)(a)(i) to (v); or
  - (f) a person who is authorised to do so under any enactment or rule of law of New Zealand or of any other country in which the insolvent participant was incorporated, created, or established; or
  - (g) the Assignee nominated under section 59 of the Insolvency Act 2006 to be the Assignee of a bankrupt's property or any person who performs a similar role in respect of a process (whether in New Zealand or in another country) that is, or is similar to, bankruptcy.

Section 156S: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156T Netting is valid and enforceable**

If the rules of a designated settlement system provide for netting, any netting in accordance with those rules is valid and enforceable despite any enactment or rule of law to the contrary.

Section 156T: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156U Interrelationship between netting and Companies Act 1993 and Insolvency Act 2006**

- (1) The following provisions do not apply to any netting in accordance with the rules of a designated settlement system:
  - (a) sections 310 to 310O of the Companies Act 1993;
  - (b) sections 254 to 262 of the Insolvency Act 2006.
- (2) However, a netted balance is to be treated as—
  - (a) an amount to which section 310(1) of the Companies Act 1993 applies if a company that is in liquidation and another party (both of whom are participants in a designated settlement system) also have mutual credits, mutual debts, or other mutual dealings between them that are not netted in accordance with the rules of the designated settlement system; and
  - (b) an amount to which section 254(1) of the Insolvency Act 2006 applies if the bankrupt (as defined in section 3 of that Act) and another party (both of whom are participants in a designated settlement system) also have mutual credits, mutual debts, or other mutual dealings between them that are not netted in accordance with the rules of the designated settlement system.

Section 156U: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

*Procedure for making designation*  
*[Repealed]*

Heading: repealed, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156V Underlying transactions, settlements, and limits on effect of sections 156Q, 156R, and 156T**

- (1) Nothing in section 156Q, 156R, or 156T 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 194 of the Insolvency Act 2006); 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 156Q, 156R, or 156T.
- (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 194 of the Insolvency Act 2006), 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) Nothing in section 292(4A) of the Companies Act 1993 or section 196 of the Insolvency Act 2006 applies to—
  - (a) an underlying transaction; or
  - (b) a settlement that was effected in accordance with the rules of a designated settlement system.
- (4) In this section, **underlying transaction**—
  - (a) means a transaction that gave rise to—
    - (i) a settlement; or
    - (ii) a settlement obligation; but
  - (b) does not include—
    - (i) a settlement instruction; or
    - (ii) a settlement that was effected in accordance with the rules of a designated settlement system; or
    - (iii) any novation of the obligations of a participant in a designated settlement system that was completed in accordance with the rules of that designated settlement system.

Section 156V: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156W Interrelationship with other enactments**

- (1) The following enactments prevail over sections 156Q, 156R, and 156T:
  - (a) sections 122(8) and 127(4) of this Act;
  - (b) sections 42(8) and 44(4) of the Corporations (Investigation and Management) Act 1989.
- (2) This Part prevails over the Insolvency (Cross-border) Act 2006.

Section 156W: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156X Transfer of property in accordance with rules is effective**

- (1) Subsection (2) applies if property is transferred in accordance with the rules of a designated settlement system.
- (2) If this subsection applies, no person may refuse to take an action on the ground that the transfer was not effective.
- (3) Nothing in this section—
  - (a) affects any right a person has to refuse to take an action on any other ground; or
  - (b) derogates from section 45G(3) of the Reserve Bank of New Zealand Act 1964 (as continued in force by section 84 of the Public Finance Act 1989).
- (4) Section 45I of the Reserve Bank of New Zealand Act 1964 (as continued in force by section 84 of the Public Finance Act 1989) must be read subject to this section.
- (5) Except as provided in this section, this section has effect despite anything to the contrary in any enactment, rule of law, constitution, deed, or agreement.

Section 156X: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### *Procedure for making designation*

Heading: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156Y Application for designation**

- (1) A person who wishes to have a settlement system declared to be a designated settlement system may apply to either of the joint regulators.
- (2) A joint regulator must, as soon as practicable, advise the other joint regulator if it receives an application.
- (3) An application must—
  - (a) be accompanied by a copy of the rules of the settlement system; and
  - (b) be accompanied by any information required by either or both of the joint regulators; and
  - (c) set out the contact details and the name or title of the person who is proposed to act as the contact person of the settlement system; and
  - (d) be accompanied by the application fee (if any) that is jointly determined by the joint regulators and approved by both the Minister and the Minister responsible for the Securities Act 1978 by notice in the *Gazette*.
- (4) The joint regulators may, together, produce guidelines relating to the application procedure.

Section 156Y: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156Z Consideration of application**

- (1) Both of the joint regulators must consider any application made in accordance with section 156Y.
- (2) In considering an application, each of the joint regulators may have regard to any or all of the following matters:
  - (a) the purpose and scope of the settlement system;
  - (b) the rules of the settlement system;
  - (c) any laws or regulatory requirements relating to the operation of the settlement system and the extent to which the settlement system complies with those laws or regulatory requirements;
  - (d) relevant international standards concerning clearing and settlement systems, to the extent that they are relevant in the circumstances;
  - (e) the capability and capacity of the operators of the settlement system;

- (f) the financial resources of the settlement system;
  - (g) the importance of the settlement system to the financial system;
  - (h) the impact on creditors of participants in the settlement system of specifying that an operator of the settlement system is an operator to whom section 103A of the Personal Property Securities Act 1999 applies;
  - (i) any other matters that the regulator considers appropriate.
- (3) In considering an application, each of the joint regulators must consider whether the settlement system should be specified to be a pure payment system.
- (4) In considering an application, each of the joint regulators may have regard, or refer, to, and may rely upon, any relevant information, work, or matter held, or produced, by the other joint regulator.

Section 156Z: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZA Decision on application**

- (1) After considering an application, the joint regulators must, together, either—
- (a) make a joint recommendation to both the Minister and the Minister responsible for the Securities Act 1978 that the settlement system to which the application relates be declared to be a designated settlement system under section 156N; or
  - (b) refuse to make that recommendation.
- (2) If subsection (1)(b) applies, the joint regulators must together give notice in writing to the applicant stating—
- (a) that the joint regulators refuse to make a recommendation that the settlement system to which the application relates be declared to be a designated settlement system under section 156N; and
  - (b) the reasons for the joint regulators' refusal.

Section 156ZA: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

*Amendments to rules*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156ZB Joint regulators must be notified of proposed amendments to rules**

- (1) The specified operator of a designated settlement system must, as soon as practicable, notify either of the joint regulators of any amendment that is proposed to be made to the rules of that designated settlement system.
- (2) A joint regulator must, as soon as practicable, advise the other joint regulator if it receives notice of a proposed amendment to the rules of a designated settlement system.

Section 156ZB: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156ZC Proposed amendments to rules may be disallowed**

- (1) The joint regulators may disallow any amendment that is proposed to be made to the rules of a designated settlement system by giving notice to that effect to the contact person of that designated settlement system on or before the day that is 20 working days after the date on which either of the joint regulators first received notice of the proposed amendment under section 156ZB(1).
- (2) If the joint regulators disallow a proposed amendment in accordance with subsection (1),—
  - (a) the proposed amendment does not come into effect; and
  - (b) the rules of the designated settlement system continue to apply as they did before the amendment was proposed.
- (3) If the joint regulators do not disallow a proposed amendment in accordance with subsection (1), the proposed amendment comes into effect on—
  - (a) the earlier of—
    - (i) the day after the date on which the contact person of the designated settlement system receives notice from the joint regulators that they have decided not to disallow the proposed amendment; or

- (ii) the day that is 21 working days after the date on which either of the joint regulators first received notice of the proposed amendment under section 156ZB(1); or
- (b) any later date that is specified as part of the proposed amendment.

Section 156ZC: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

*Variation and revocation of designation*

Heading: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156ZD Variation of designation**

The Governor-General may, by Order in Council, on the advice of both the Minister and the Minister responsible for the Securities Act 1978 given in accordance with a joint recommendation of the joint regulators, vary any designation made under section 156N—

- (a) by amending any of the matters referred to in section 156N(2)(b) to (d) and (3)(b) to (d); or
- (b) by making the designation subject to a requirement that an amendment be made to the documents that evidence the rules of the settlement system that is the subject of the designation; or
- (c) by revoking or amending any condition to which the designation is subject; or
- (d) by making the designation subject to a new condition.

Section 156ZD: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156ZE Revocation of designation**

The Governor-General may, by Order in Council, on the advice of both the Minister and the Minister responsible for the Securities Act 1978 given in accordance with a joint recommendation of the joint regulators, revoke any designation made under section 156N.

Section 156ZE: replaced, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZF Settlement and netting not affected by variation or revocation of designation**

The variation or revocation of a designation made under section 156N does not affect the application of sections 156Q, 156R, and 156T to settlements that were effected, and netting that took place, before the variation or revocation.

Section 156ZF: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZG Application for variation or revocation of designation**

- (1) A person who wishes to have the designation made under section 156N for a designated settlement system varied or revoked may apply to either of the joint regulators.
- (2) A joint regulator must, as soon as practicable, advise the other joint regulator if it receives an application.
- (3) An application must be accompanied by the application fee (if any) that is jointly determined by the joint regulators and approved by both the Minister and the Minister responsible for the Securities Act 1978 by notice in the *Gazette*.

Section 156ZG: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZH Either joint regulator may independently begin review of designation**

- (1) Either of the joint regulators may, independently of the other joint regulator and without having received an application under section 156ZG, begin a review to determine whether to recommend a variation or revocation of a designation made under section 156N.
- (2) A joint regulator must, as soon as practicable, advise the other joint regulator if it begins a review to determine whether to recommend a variation or revocation of a designation made under section 156N.
- (3) No fee can be charged if a joint regulator begins a review under subsection (1).

Section 156ZH: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

**156ZI Matters joint regulators may have regard to in recommending variation or revocation of designation**

- (1) In determining whether to make a recommendation that any designation made under section 156N be varied or revoked, each of the joint regulators may have regard to any or all of the following matters:
  - (a) the purpose and scope of the designated settlement system;
  - (b) the rules of the designated settlement system;
  - (c) any laws or regulatory requirements relating to the operation of the designated settlement system and the extent to which the designated settlement system complies with those laws or regulatory requirements;
  - (d) relevant international standards concerning clearing and settlement systems, to the extent that they are relevant in the circumstances;
  - (e) the capability and capacity of the operators of the settlement system;
  - (f) the financial resources of the settlement system;
  - (g) the importance of the designated settlement system to the financial system;
  - (h) the impact on creditors of participants in the settlement system of specifying, or no longer specifying, that an operator of the settlement system is an operator to whom section 103A of the Personal Property Securities Act 1999 applies;
  - (i) any failure to comply with any condition to which the designation is subject;
  - (j) any failure to comply with the requirements of this Act;
  - (k) any other matters that the joint regulator considers appropriate.
- (2) In determining whether to make a recommendation that any designation made under section 156N be varied or revoked, each of the joint regulators may have regard, or refer, to, and may rely upon, any relevant information, work, or matter held, or produced, by the other joint regulator.

Section 156ZI: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZJ Procedure for variation or revocation of designation**

- (1) Before making a recommendation that any designation made under section 156N be varied or revoked, the joint regulators must together—
  - (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 joint regulators 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 joint regulators consider 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.

Section 156ZJ: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### *Obligations to give notice and supply information*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZK Contact person must be notified of insolvency event**

- (1) This section applies if—
  - (a) a participant in a designated settlement system (**participant A**) becomes subject to an insolvency event;
  - (b) any other participant whose settlements are effected by participant A in accordance with the rules of that designated settlement system becomes subject to an insolvency event.
- (2) If this section applies, participant A must, as soon as practicable after becoming aware of the insolvency event, notify that fact to the contact person of that designated settlement 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 insolvency event by the time participant A had to notify the contact person under that subsection.

Section 156ZK: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZL Supply of information relating to designated settlement system**

- (1) The joint regulators may, by notice in writing, require any or all of the following persons to supply the joint regulators with any information relating to any designated settlement system:
  - (a) the specified operator of the designated settlement system;
  - (b) a participant in the designated settlement system;
  - (c) the contact person of the designated settlement system.
- (2) The joint regulators may exercise the power conferred by subsection (1) only if the joint regulators consider that the information is reasonably required to enable them to perform their functions and duties, or exercise their powers, 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.
- (5) The penalty for an offence against this section is set out in section 156ZQ.

Section 156ZL: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### *Disclosure of information*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZM Disclosure of information between joint regulators**

- (1) No obligation as to secrecy or other restriction upon the disclosure of information, whether imposed by an enactment or otherwise, prevents the disclosure of information between either of the following persons:
  - (a) the Bank; and
  - (b) the FMA.
- (2) Subsection (1) only applies to information—
  - (a) obtained for the purposes of the administration of this Part, whether under sections 156Z(4), 156ZI(2), or 156ZL or otherwise; and
  - (b) that is disclosed by the Bank or the FMA in order to enable them to perform their functions and duties, or exercise their powers, under this Part.

Section 156ZM: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156ZM(1)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

Section 156ZM(2)(b): amended, on 1 May 2011, by section 84(3) of the Financial Markets Authority Act 2011 (2011 No 5).

### **156ZN Disclosure of information to third parties**

- (1) The joint regulators may publish or disclose any information or data supplied in accordance with section 156Y(3)(b) or 156ZL 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 performs functions and duties that correspond with, or are similar to, those conferred on the joint regulators under this Part, and the joint regulators are satisfied that the information or data will be used by that

- central bank, authority, or body for the purpose of performing those functions or duties; or
- (e) the publication or disclosure of the information or data is to any person who the joint regulators are 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 joint regulators must not publish or disclose information or data under subsection (1)(d) or (e) unless the joint regulators are satisfied that satisfactory provision exists to protect the confidentiality of that information or data.
- (3) An officer or employee of either of the joint regulators must not publish or disclose any information or data supplied in accordance with section 156Y(3)(b) or 156ZL except for the purposes of, or in connection with, the exercise of powers conferred by this Act.
- (4) An officer or employee of either of the joint regulators 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 156ZQ.

Section 156ZN: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

### **156ZO 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 156ZN(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 joint regulators;
  - (b) in the case of a publication or disclosure under section 156ZN(1)(e),—

- (i) authorised by the joint regulators and in accordance with any conditions that may be imposed by the joint regulators; or
  - (ii) necessary or desirable for the performance of any function or duty, or the exercise of any power, conferred by any enactment;
  - (c) in the case of a publication or disclosure under section 156ZN(1)(f), in accordance with the terms and conditions (if any) 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 156ZQ.

Section 156ZO: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### **156ZP Application of other enactments to information published or disclosed under section 156ZN**

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

Section 156ZP: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### *Penalties for offences against this Part*

Heading: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

#### **156ZQ Penalties for offences**

- (1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on 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; or
  - (b) in the case of a body corporate, to a fine not exceeding \$750,000.
- (2) The provisions are—

- (a) section 156ZL (which relates to failing to supply information relating to a designated settlement system);
- (b) section 156ZN (which relates to disclosure of information supplied in accordance with section 156ZL to third parties);
- (c) section 156ZO (which relates to limits on further disclosure of information).

Section 156ZQ: inserted, on 24 November 2009, by section 6 of the Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53).

Section 156ZQ(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **Part 5D** **Deposit takers**

Part 5D: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *Preliminary provisions*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157A 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 deposit taker.

Section 157A: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157B Interpretation**

- (1) In this Part, unless the context otherwise requires,—  
**approved rating agency** means a rating agency approved by the Bank under section 157J  
**borrowing group**, in relation to a deposit taker, means the deposit taker and all its guaranteeing subsidiaries

**capital ratio**, in relation to a deposit taker or borrowing group, means the level of capital in relation to the credit exposures and other risks of a deposit taker or borrowing group

**collective investment scheme** means—

- (a) an arrangement or scheme to which a participatory security (within the meaning of section 2(1) of the Securities Act 1978) relates; and
- (b) a superannuation scheme (within the meaning of section 2A(1) of the Superannuation Schemes Act 1989); and
- (c) a unit trust (within the meaning of section 2(1) of the Unit Trusts Act 1960)

**debt security** has the meaning given to it by section 2(1) of the Securities Act 1978

**governing body** means,—

- (a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate;
- (b) in relation to a trust, the trustees;
- (c) in relation to a unit trust, the manager and trustee;
- (d) in relation to a partnership, unincorporated joint venture, or other unincorporated body of persons, either—
  - (i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership, unincorporated joint venture, or other unincorporated body of persons; or
  - (ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons

**governing document** means the rules and instruments constituting, or defining the constitution of, an entity

**guaranteeing subsidiary**, in relation to a deposit taker, means a subsidiary of the deposit taker that—

- (a) is unconditionally liable (whether or not jointly or severally with the deposit taker or any other person) to repay some or all debt securities issued by the deposit taker; or

- (b) is liable to repay some or all debt securities issued by the deposit taker subject only to the condition that the deposit taker or any other person has failed to do so
- related party**, in relation to a deposit taker, means—
- (a) the directors of the deposit taker; and
  - (b) the senior office holders of the deposit taker; and
  - (c) the relatives of persons referred to in paragraphs (a) and (b); and
  - (d) subsidiaries; and
  - (e) in the case of a deposit taker that is a company, any person who—
    - (i) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the ordinary shares of the company; or
    - (ii) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights of the company; or
    - (iii) has, by any other means, 10% or more of the control of the company; and
  - (f) in the case of a deposit taker that is an entity other than a company, any person who—
    - (i) is in a position to control (whether directly or indirectly) 10% or more of the voting rights in relation to that entity; or
    - (ii) has, by any other means, 10% or more of the control of that entity; and
  - (g) any person who has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the deposit taker; and
  - (h) any person or class of persons declared by regulations to be a related party for the purposes of this Part
- relative**, in relation to any person, means—
- (a) that person's spouse, civil union partner, or de facto partner; and
  - (b) any parent (including step-parent), brother, sister, or child (including stepchild) of that person; and

- (c) any parent (including step-parent), brother, sister, or child (including stepchild) of that person's spouse, civil union partner, or de facto partner

**senior office holder,—**

- (a) in relation to a deposit taker, means a person occupying a position that allows the person to exercise significant influence over the management or administration of the deposit holder (for example, a chief executive or a chief financial officer); and
- (b) includes any class or classes of persons declared by regulations to be senior office holders for the purposes of this Part; but
- (c) does not include any class or classes of persons declared by regulations not to be senior office holders for the purposes of this Part

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

**trust deed**, in relation to a deposit taker, means a trust deed required by section 33(2)(a) of the Securities Act 1978 in respect of any debt security offered to the public by the deposit taker

**trustee**, in relation to a deposit taker, means a person appointed as trustee in accordance with the Securities Act 1978 in respect of any debt security offered to the public by the deposit taker.

- (2) 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 for either or both of the following purposes:
  - (a) declaring a person or class of persons to be a related party for the purposes of this Part;
  - (b) declaring a class of persons to be, or not to be, senior office holders for the purposes of this Part.

Section 157B: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157C Deposit taker defined**

- (1) For the purposes of this Part, **deposit taker**—
  - (a) means a person who—

- (i) offers debt securities to the public in New Zealand; and
  - (ii) carries on the business of borrowing and lending money, or providing financial services, or both; and
- (b) includes—
- (i) a building society as defined in section 2(1) of the Building Societies Act 1965, unless the building society is a registered bank; and
  - (ii) a credit union as defined in section 2 of the Friendly Societies and Credit Unions Act 1982; and
  - (iii) a person or class of persons that is declared by regulations to be a deposit taker for the purposes of this Part; but
- (c) does not include—
- (i) an issuer of a collective investment scheme;
  - (ii) a registered bank;
  - (iii) a local authority;
  - (iv) the Crown (as defined in section 2(1) of the Public Finance Act 1989);
  - (v) a person or class of persons that is declared by regulations not to be a deposit taker for the purposes of this Part.
- (2) For the purposes of this Part, a reference to an **offer of debt securities to the public** has the same meaning as an offer of securities to the public as set out in section 3 of the Securities Act 1978.
- (3) If a person has, before this section comes into force, offered debt securities to the public in New Zealand and any of those securities remain unpaid, the person must be treated as satisfying the requirement in subsection (1)(a)(i).
- (4) A person remains a deposit taker until all debt securities offered to the public in New Zealand by the person are repaid.
- (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 for the purpose of declaring a person or class of persons to be, or not to be, a deposit taker for the purposes of this Part.

- (6) In considering whether to advise and recommend the making of regulations under subsection (5), the Minister and the Bank must have regard to—
- (a) the purposes of this Part; and
  - (b) the nature of the business activities carried on by the person or class of persons and the extent to which those activities—
    - (i) are similar in substance to the activities of a deposit taker (as defined in subsection (1)); or
    - (ii) involve activities as a deposit taker; and
  - (c) the public interest; and
  - (d) any other matters the Minister or the Bank considers relevant.

Section 157C: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157D Application of Part**

This Part, in so far as it applies to trust deeds, applies to every trust deed whether or not the trust deed was registered under the Securities Act 1978 before the date of commencement of this Part.

Section 157D: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157E Bank to consult before recommending making of regulations under this Part**

- (1) The Bank must consult with the following before making a recommendation for the making of any regulations under this Part:
- (a) the FMA; and
  - (b) if reasonably practicable, other persons, or the representatives of those persons, who the Bank considers will be substantially affected by any regulations made in accordance with the recommendation.
- (2) Failure to comply with subsection (1) does not affect the validity of regulations made under this Part.

Section 157E: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157E(1)(a): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **157F Principles to be taken into account under this Part**

- (1) The Bank must take into account the principles in subsection (2) when carrying out its functions and exercising its powers under this Part, including—
  - (a) granting exemptions;
  - (b) imposing terms and conditions in relation to exemptions;
  - (c) making recommendations to the Minister for the making of regulations under this Part.
- (2) The principles are the following:
  - (a) the desirability of consistency in the treatment of similar institutions, regardless of matters such as their corporate form;
  - (b) the importance of recognising—
    - (i) that it is not the purpose of this Part to eliminate all risk in relation to the performance of deposit takers or to limit diversity among deposit takers; and
    - (ii) that depositors are responsible for assessing risk in relation to potential investments and for their own investment choices;
  - (c) the desirability of providing to depositors adequate information to enable them to assess risk in relation to potential investments and to distinguish between high-risk and low-risk deposit takers;
  - (d) the desirability of sound governance of deposit takers;
  - (e) the desirability of effective risk management by deposit takers;
  - (f) the need to avoid unnecessary compliance costs;
  - (g) the need to maintain competition within the deposit taking sector.

Section 157F: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157G Exemptions from Part**

- (1) The Bank may exempt any deposit taker, class of deposit takers, or trustee from compliance with any provision or provisions of—
  - (a) this Part; or

- (b) any regulations made under this Part.
- (2) The Bank must not grant an exemption under this section unless it is satisfied that—
- (a) the exemption will be consistent with the maintenance of a sound and efficient financial system; and
  - (b) compliance with the relevant provision or provisions would, in the circumstances, require the deposit taker, class of deposit takers, or trustee to comply with requirements that are unduly onerous or burdensome; and
  - (c) the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.
- (3) An exemption may be granted on any terms and conditions that the Bank thinks fit, including, in relation to a deposit taker,—
- (a) a requirement that the deposit taker have a minimum capital ratio;
  - (b) a requirement that the deposit taker have a specified minimum level of capital;
  - (c) a requirement that the deposit taker comply with specified liquidity requirements;
  - (d) a requirement that the deposit taker disclose that it does not have a rating of its creditworthiness under section 157I, and the form and content of that disclosure;
  - (e) a prohibition or restriction on disclosure by the deposit taker of any rating of creditworthiness or financial condition that is not from an approved rating agency;
  - (f) a maximum limit on exposures to related parties;
  - (g) a requirement that the deposit taker comply with specified requirements in relation to the governance of the deposit taker;
  - (h) a requirement that the deposit taker comply with specified requirements in relation to systems, policies, and standards to be adopted and complied with by the deposit taker for the purpose of managing credit risk, liquidity risk, market risk, and operational risk;
  - (i) any other prudential requirements the Bank considers necessary or desirable to achieve the purposes of this Part.

- (4) The Bank may amend or revoke an exemption in the same way as an exemption may be granted under this section.
- (5) An exemption is a disallowable instrument under the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (6) A class exemption must be published under section 6 of the Legislation Act 2012 and, for this purpose, **class exemption** means an exemption of general application that applies to a class of deposit takers.
- (7) An exemption that is not a class exemption under subsection (6) must, as soon as practicable after being granted, be—
  - (a) published on an Internet site maintained by or on behalf of the Bank; and
  - (b) notified in the *Gazette*; and
  - (c) made available in printed form for purchase on request by members of the public.
- (8) The Bank's reasons for granting the exemption (including why an exemption is appropriate) must be published together with the exemption.
- (9) However, the Bank may defer publishing, and need not publish, the reasons for granting an exemption if the Bank is satisfied on reasonable grounds that it is proper to do so on the ground of commercial confidentiality.
- (10) A notification in the *Gazette* for the purpose of subsection (7)(b) does not have to incorporate the exemption.

Section 157G: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157G(1): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(5): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(6): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(7): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(8): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(9): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 157G(10): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **157H Effect of exemption**

A person does not breach a requirement of this Part if—

- (a) an exemption from the requirement applies to that person; and
- (b) the person complies with the terms and conditions of the exemption.

Section 157H: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### *Credit ratings*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157I Deposit taker must have current credit rating**

A deposit taker must have a current rating of its creditworthiness, or, if required by regulations made under section 157K, the creditworthiness of the borrowing group of which the deposit taker is part, that—

- (a) complies with the requirements prescribed by regulations made under section 157K; and
- (b) is given by an approved rating agency.

Section 157I: inserted, on 1 March 2010, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157J Bank may approve rating agencies**

- (1) The Bank may approve a person as a rating agency for the purposes of this Part.
- (2) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:
  - (a) the independence of the rating agency;
  - (b) the adequacy of resources available to the rating agency;
  - (c) the credibility and objectivity of the rating agency's methodology;
  - (d) the consistency and comparability of the rating agency's ratings when assessed against ratings industry practice;

- (e) the adequacy of the rating agency's disclosure of information, including information about its processes, experience, and ownership;
  - (f) relevant international standards, codes, and recommended practices relating to the ratings industry.
- (3) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in subsection (2).
- (4) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.
- (5) The Bank must publish and keep up to date a list of approved rating agencies on an Internet site maintained by, or on behalf of, the Bank that is publicly accessible at all reasonable times.
- Section 157J: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157K Regulations relating to credit ratings**

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 for either or both of the following purposes:

- (a) providing for the following matters in relation to ratings of creditworthiness required to be held by deposit takers:
  - (i) the type of rating (for example, whether it is a short-term or long-term rating);
  - (ii) what the rating relates to (for example, whether it indicates the creditworthiness of a deposit taker with respect to a specific financial obligation or applies to the deposit taker's overall creditworthiness);
- (b) requiring a deposit taker to have a rating of creditworthiness of the borrowing group of which the deposit taker is part.

Section 157K: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *Governance requirements*

Heading: inserted, on 1 December 2010, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157L Governance requirements**

- (1) If a deposit taker is a company or a building society,—
  - (a) the governing body of the deposit taker must include at least 2 independent directors; and
  - (b) the chairperson of the governing body of the deposit taker may not be an employee of either the deposit taker or a related party.
- (2) If a deposit taker is a subsidiary, the constitution of the deposit taker must not include any provision under which directors of the deposit taker may act otherwise than in the best interests of the deposit taker.
- (3) For the purposes of this section, **independent director** means a director that—
  - (a) is not an employee of either the deposit taker or a related party; and
  - (b) is not a director of a related party; and
  - (c) does not, directly or indirectly, have a qualifying interest in more than 10% of the voting securities of the deposit taker or a related party.

Section 157L: inserted, on 1 December 2010, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *Risk management*

Heading: inserted, on 1 September 2009, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157M Deposit taker must have and comply with risk management programme**

- (1) Every deposit taker must have a risk management programme and take all practicable steps to comply with that programme.
- (2) The risk management programme must—
  - (a) be in writing; and
  - (b) set out the procedures that the deposit taker will use for the effective identification and management of the following risks:

- (i) credit risk;
  - (ii) liquidity risk;
  - (iii) market risk;
  - (iv) operational risk; and
  - (c) set out appropriate and auditable documentation and record keeping requirements; and
  - (d) describe the steps that the deposit taker will take to ensure that the programme remains current, which must include procedures for—
    - (i) regular review of the programme to systematically identify deficiencies in the effectiveness of the programme; and
    - (ii) obtaining the approval of the trustee to amendments to the programme that are necessary to address such deficiencies; and
  - (e) be appropriate to the operations of the deposit taker, having regard to the factors relevant to the risks referred to in paragraph (b) (for example, the size of the deposit taker, its funding structure, the market sector in which it operates, its business strategy, and its relationship with its borrowing group).
- (3) The Bank may issue, in the manner that the Governor thinks fit, guidelines for the purpose of interpreting the risk categories referred to in subsection (2)(b) that must be covered by the risk management programme.

Section 157M: inserted, on 1 September 2009, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157N Risk management programme must be provided to trustee and must be amended if required by trustee**

- (1) The deposit taker must give a copy of its risk management programme to the trustee.
- (2) The trustee must, as soon as practicable after receiving the copy of the risk management programme, inform the deposit taker whether the trustee is satisfied that the risk management programme meets the requirements in section 157M(2).
- (3) If the trustee is not satisfied that the risk management programme meets the requirements in section 157M(2),—

- (a) the trustee may require the deposit taker to amend the programme and to resubmit the programme to the trustee for approval within any reasonable time that the trustee may specify; and
- (b) the deposit taker must comply with those requirements.

Section 157N: inserted, on 1 September 2009, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157O Trustee may require deposit taker to have risk management programme audited**

- (1) The trustee may require the deposit taker to have the risk management programme audited in a specified manner, at the cost of the deposit taker, within any reasonable time that the trustee may specify.
- (2) The deposit taker must comply with a requirement of the trustee under subsection (1) within the time specified by the trustee.

Section 157O: inserted, on 1 September 2009, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Minimum capital requirement*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157P Regulations may impose requirement that trust deed sets out minimum capital that deposit taker is required to maintain**

- (1) 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 for the purpose of imposing a requirement that deposit takers and trustees ensure that the trust deed sets out the minimum capital that the deposit taker is required to maintain.
- (2) Regulations made under this section may—
  - (a) require the trust deed to set out—
    - (i) the amount of the minimum capital that the deposit taker is required to maintain; and

- (ii) the form of that capital (for example, the financial instruments that may be taken into account in calculating capital); and
- (b) provide that the amount of the minimum capital set out in the trust deed must be not less than an amount prescribed in the regulations; and
- (c) provide that the form of the capital set out in the trust deed must be a form prescribed by the regulations.

Section 157P: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157Q Deposit takers and trustees must ensure trust deed sets out minimum capital deposit taker is required to maintain**  
A deposit taker and the trustee must comply with any requirement imposed by regulations made under section 157P.

Section 157Q: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157R Deposit taker must maintain not less than minimum capital prescribed**

A deposit taker must maintain minimum capital of not less than the amount prescribed by regulations for the purposes of section 157P in a form prescribed by regulations for the purposes of that section.

Section 157R: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Capital ratio requirement*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157S Regulations may impose requirement that trust deed includes capital ratio**

- (1) 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 for the purpose of imposing a requirement that deposit takers and trustees ensure that trust deeds include a capital ratio, calculated in accordance with a prescribed framework, that the deposit taker must maintain.

- (2) Regulations made under this section may do 1 or more of the following:
- (a) provide for the capital ratio to be calculated in respect of—
    - (i) the deposit taker; or
    - (ii) a borrowing group of which the deposit taker is part;
  - (b) provide for the capital ratio to be set at a specified minimum level for a particular deposit taker or a class of deposit takers;
  - (c) prescribe the framework in accordance with which the capital ratio must be calculated;
  - (d) provide for variation (whether as to content or otherwise) of the framework to apply to particular deposit takers or classes of deposit takers;
  - (e) incorporate by reference a framework published by, or on behalf of, any body or person in any country—
    - (i) in whole or in part; and
    - (ii) with modifications, additions, or variations specified in the regulations.
- (3) The provisions of Schedule 3 apply to a framework incorporated by reference in regulations made under this section.

Section 157S: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157T Deposit takers and trustees must ensure capital ratio included in trust deed**

A deposit taker and the trustee must comply with any requirement imposed by regulations made under section 157S.

Section 157T: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157U Deposit taker must maintain capital ratio required to be included in trust deed**

A deposit taker must maintain any capital ratio that is required to be included in the trust deed by regulations made under section 157S.

Section 157U: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Restrictions on related party exposures*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157V Regulations may impose requirement that trust deed includes maximum limit on exposures to related parties**

- (1) 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 for the purpose of imposing a requirement that deposit takers and trustees ensure that trust deeds include a maximum limit on exposures to related parties.
- (2) Regulations made under this section may—
  - (a) provide that the maximum limit on exposures to related parties is relative to—
    - (i) the capital of the deposit taker; or
    - (ii) the capital of the borrowing group of which the deposit taker is part;
  - (b) provide that the maximum limit on exposures to related parties applies in respect of exposures of the deposit taker or exposures calculated across the borrowing group of which the deposit taker is part;
  - (c) require every deposit taker and trustee to ensure that the trust deed includes a specified maximum limit on exposures to related parties;
  - (d) require every deposit taker and trustee to ensure that the trust deed includes a maximum limit on exposures to related parties that is fixed by agreement between the deposit taker and the trustee (*see* section 157ZD for provisions that apply if there is no agreement).
- (3) If subsection (2)(d) applies, the regulations must specify the framework (for example, covering matters as to the identification and measurement of credit exposures) in accordance with which the deposit taker and the trustee must fix the maximum agreed limit.

Section 157V: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157W Regulations may incorporate by reference framework for calculation of maximum limit on exposures to related parties**

- (1) Regulations made under section 157V may incorporate by reference a framework published by, or on behalf of, any person or body in any country.
- (2) A framework incorporated by reference in the regulations—
  - (a) may be incorporated in whole or in part; and
  - (b) with modifications, additions, or variations specified in the regulations.
- (3) The provisions of Schedule 3 apply to a framework incorporated by reference in regulations made under section 157V.

Section 157W: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157X Deposit takers and trustees must ensure maximum limit on exposures to related parties is included in trust deed**

A deposit taker and the trustee must comply with any requirement imposed by regulations made under section 157V.

Section 157X: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157Y Deposit taker must not exceed maximum limit on related party exposures**

A deposit taker must not exceed any maximum limit on exposures to related parties required by regulations made under section 157V to be included in the trust deed.

Section 157Y: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Liquidity requirements*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157Z Regulations may impose requirement that liquidity requirements be included in trust deed**

- (1) 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 for the purpose of imposing

- a requirement that deposit takers and trustees ensure that trust deeds include liquidity requirements.
- (2) Regulations made under this section may, in relation to the liquidity requirements to be included in the trust deed, prescribe 1 or more of the following:
- (a) assets that qualify as liquid assets for the purposes of the regulations;
  - (b) minimum amounts of liquid assets relative to liabilities that must be maintained by deposit takers;
  - (c) requirements concerning matching maturity of assets and liabilities;
  - (d) requirements in respect of a deposit taker that require the liquidity of the borrowing group of which the deposit taker is part to be taken into account;
  - (e) other measures to better ensure that a deposit taker maintains prudent cash flows and a level of liquid assets sufficient to enable it to withstand a plausible range of liquidity shocks (for example, events that result in it experiencing a significantly reduced inflow of liquid assets).

Section 157Z: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZA Deposit takers and trustees must ensure liquidity requirements are included in trust deeds**

A deposit taker and the trustee must comply with any requirement prescribed by regulations made under section 157Z.

Section 157ZA: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZB Deposit takers must comply with liquidity requirements in trust deeds**

A deposit taker must comply with the liquidity requirements required to be included in the trust deed by regulations made under section 157Z.

Section 157ZB: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Other matters relating to trust deeds*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157ZC Amendment to trust deed must be treated as if authorised to be made**

- (1) If this Part requires, or any regulations made under this Part require, a deposit taker and the trustee to ensure that a matter is included in or excluded from a trust deed, an amendment to the trust deed in compliance with that requirement—
  - (a) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; and
  - (b) applies despite any defect in the form or mode of execution of the amendment.
- (2) Subsection (1) applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment, rule of law, or agreement.

Section 157ZC: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157ZD Trustee may execute amendment to trust deed**

- (1) This section applies if—
  - (a) this Part requires, or regulations made under this Part require, a deposit taker and the trustee to ensure that a matter is included in or excluded from a trust deed; and
  - (b) it is necessary to amend the trust deed within a certain time in order to comply with that requirement; and
  - (c) the trustee has made reasonable efforts, in good faith, to negotiate with the deposit taker for the purpose of agreeing to an amendment to the trust deed to ensure compliance with the requirement; and
  - (d) the trustee has not, within a reasonable period before the expiry of the time allowed for amending the trust deed, been able to reach an agreement with the deposit taker about the amendment to be made to the trust deed.
- (2) If this section applies, the trustee may execute a deed amending the trust deed without the consent or agreement of the de-

posit taker or any other person in order to ensure that the trust deed complies with the requirement of this Part or the regulations.

- (3) The deed amending the trust deed—
  - (a) has effect despite there being no consent or agreement of the deposit taker or any other person; and
  - (b) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; and
  - (c) applies despite any defect in its form or mode of execution.
- (4) Subsection (3) applies despite there being no power of variation in the trust deed or anything to the contrary in the trust deed or other enactment, rule of law, or agreement.

Section 157ZD: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### *Obligations of trustees to Bank*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZE Bank may require trustee to attest as to deposit taker's compliance with requirements**

- (1) The Bank may require a trustee to attest to the Bank, at a time and in a manner specified by the Bank, as to whether the trustee is satisfied that the deposit taker is complying with the requirements of this Part or of regulations made under this Part.
- (2) If the Bank requires a trustee to attest to the Bank under this section, the trustee must either—
  - (a) provide that attestation; or
  - (b) if the trustee is not able to attest to the Bank as required, the trustee must report the reason, including the details of any non-compliance or suspected non-compliance by the deposit taker.

Section 157ZE: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZF Trustee must report to Bank non-compliance or likely non-compliance by deposit taker**

If a trustee has reasonable grounds to believe that a failure on the part of the deposit taker to comply in a material respect with this Part or any regulations made under this Part has or may have occurred, or is likely to occur, the trustee must report the non-compliance or likely non-compliance to the Bank as soon as practicable.

Section 157ZF: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZG Obligation on trustees to disclose information to Bank in certain circumstances**

- (1) This section applies if a trustee, in the course of or in connection with the performance of functions as trustee, becomes aware of information on the basis of which he or she could reasonably form an opinion that—
  - (a) the deposit taker is unable to pay the deposit taker's debts as they become due in the normal course of business; or
  - (b) the value of the deposit taker's assets is less than the value of the deposit taker's liabilities, including contingent liabilities; or
  - (c) it is likely that—
    - (i) the deposit taker will be unlikely to be able to pay the deposit taker's debts as they become due in the normal course of business; or
    - (ii) the value of the deposit taker's assets will be less than the value of the deposit taker's liabilities, including contingent liabilities; or
  - (d) the deposit taker has breached, or is likely to breach, in a material respect,—
    - (i) the terms of the trust deed; or
    - (ii) the terms of any offer of debt securities to which the trust deed relates.
- (2) This section also applies if the Bank, by notice in writing to the trustee, requires the trustee to provide the Bank with information relating to the business, operation, or management of a deposit taker.

- (3) If this section applies, the trustee must, as soon as practicable, disclose to the Bank all information held by the trustee that is relevant to the matter referred to in subsection (1) or, as the case may be, the matters referred to in the notice under subsection (2), obtained in the course of, or in connection with, the performance of functions as trustee.

Section 157ZG: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZH Protection of trustees**

- (1) No civil, criminal, or disciplinary proceedings lie against a trustee arising from the disclosure in good faith of information to the Bank under section 157ZE to 157ZG.
- (2) No person may terminate the appointment of a trustee by reason of the trustee disclosing information to the Bank in good faith under section 157ZE to 157ZG.
- (3) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of a trustee, may make an order against, or do any act in relation to, that person in respect of the fact of that disclosure.

Section 157ZH: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *Investigation and enforcement powers of Bank*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZI Bank may require report relating to deposit taker**

- (1) For the purpose of investigating whether a deposit taker is complying with the requirements of this Part, or regulations made under this Part, the Bank may, by notice to the deposit taker, require the deposit taker to supply the Bank with a report or series of reports prepared by a person approved or appointed by the Bank on matters relating to the business, operation, or management of the deposit taker.
- (2) The deposit taker must provide the approved or appointed person with access to the accounting and other records of the deposit taker and must provide information relating to those

records if the person preparing the report requests the deposit taker to do so for the purposes of the report.

- (3) Subsection (2) is subject to section 157ZK.
- (4) To avoid doubt, the deposit taker is liable for the cost of every report that it is required to supply to the Bank under this section.

Section 157ZI: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZJ Power to obtain information and documents**

- (1) This section applies if the Bank has reasonable cause to believe that a deposit taker has committed an offence against this Part.
- (2) If this section applies, the Bank may,—
  - (a) by notice in writing to the deposit taker, require the deposit taker to supply to the Bank, within the time specified in the notice, the information, papers, documents, records, or things specified in the notice; or
  - (b) appoint in writing a suitably qualified person to enter and search any place and inspect, remove, and take copies of any information, papers, documents, records, or things in the possession, custody, or control of any person.

Section 157ZJ: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZK Limitation on information to be provided**

Nothing in section 157ZI(2) or 157ZJ(2) requires a person to produce any information, papers, documents, records, or things if compliance with that requirement would be a breach of an obligation of secrecy or non-disclosure imposed on the person by an enactment (other than the Official Information Act 1982 or the Privacy Act 1993).

Section 157ZK: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZL Limitations on entering and searching place**

A person appointed under section 157ZJ(2)(b) must not enter and search any place, or inspect, remove, or take copies of any information, papers, documents, records, or things in the pos-

session, or under the control, of any person unless that person is authorised by search warrant issued under section 157ZM.

Section 157ZL: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZM Search warrant may be issued**

- (1) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a search warrant to a person appointed under section 157ZJ(2)(b) if the issuing officer is satisfied that there is reasonable cause to believe that a deposit taker has committed an offence under this Part.
- (2) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

Section 157ZM: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZM(1): amended, on 1 October 2012, by section 298(1) of the Search and Surveillance Act 2012 (2012 No 24).

Section 157ZM(2): replaced, on 1 October 2012, by section 298(2) of the Search and Surveillance Act 2012 (2012 No 24).

#### **157ZN Privileges**

- (1) If a person could, in a criminal proceeding, assert a privilege under sections 54 to 57 of the Evidence Act 2006 in respect of any communication or information, the person is taken to have the same privilege for the purposes of—
  - (a) a request to supply access to accounting and other records of the deposit taker or provide information relating to those records under section 157ZI(2); and
  - (b) a notice under section 157ZJ(2)(a).
  - (c) *[Repealed]*
- (2) Subsection (3) applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006.
- (3) The application by subsection (1) of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
  - (a) the issue of, or the obligation to comply with, a notice under section 157ZJ(2)(a) in respect of a document to which this subsection applies; or

- (b) *[Repealed]*
- (c) the admissibility, in a criminal proceeding under this Part, of any evidence that relates to the contents of a document obtained as a result of a notice under section 157ZJ(2)(a).
- (4) A person who has a privilege under this section has the right—
  - (a) to refuse to disclose a communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and
  - (b) to prevent the search of any such communication or information; and
  - (c) to require the return of such communication or information if it is seized by a person exercising a power of search pending determination of the claim to privilege.
- (5) If a person refuses to disclose a communication or information on the ground that it is privileged under this section, the Governor may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her.
- (6) A District Court Judge may, on the application of the Governor, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding.
- (7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.
- (8) Nothing in this section affects the application of section 60 of the Evidence Act 2006.

Section 157ZN: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZN(1)(b): amended, on 1 October 2012, by section 298(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 157ZN(1)(c): repealed, on 1 October 2012, by section 298(4) of the Search and Surveillance Act 2012 (2012 No 24).

Section 157ZN(3)(b): repealed, on 1 October 2012, by section 298(5) of the Search and Surveillance Act 2012 (2012 No 24).

Section 157ZN(3)(c): amended, on 1 October 2012, by section 298(6) of the Search and Surveillance Act 2012 (2012 No 24).

*Confidentiality of information*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157ZO Confidentiality of information**

- (1) This section applies to—
  - (a) information supplied or disclosed to, or obtained by,—
    - (i) the Bank, under or for the purposes of, or in connection with, the exercise of powers conferred by this Part;
    - (ii) a person appointed by the Bank under section 157ZJ(2)(b);
  - (b) information derived from, or based on, information referred to in paragraph (a);
  - (c) information relating to the exercise, or possible exercise, of the powers conferred by this Part.
- (2) The Bank, and any person appointed by the Bank under section 157ZJ(2)(b), must not publish or disclose information to which this section applies except—
  - (a) with the consent of the person to whom the information relates; or
  - (b) to the extent that the information is available to the public under any Act, other than the Official Information Act 1982, or in a public document; or
  - (c) for the purposes of this Part or in connection with the exercise of powers conferred by this Part; or
  - (d) in connection with any proceedings for an offence against this Part; or
  - (e) to the Registrar of the Companies Office or the FMA; or
  - (f) to the trustee of the deposit taker to whom the information relates; or
  - (g) to any person who the Bank is satisfied has a proper interest in receiving the information.
- (3) Information to which this section applies must not be published or disclosed under subsection (2)(f) or (g) unless the

- Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information published or disclosed.
- (4) A person to whom information to which this section applies is published or disclosed under subsection (2)(c) must not publish, disclose, or use the information except—
- (a) for the purposes of this Part or in connection with the exercise of powers conferred by this Part; or
  - (b) in accordance with any conditions that may be specified by the Bank.
- (5) A person to whom information to which this section applies is disclosed under subsection (2)(e), (f), or (g) must not publish, disclose, or use the information 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.

Section 157ZO: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZO(2)(e): amended, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

### **157ZP Person who does not comply with section 157ZO commits offence**

Every person who does not comply with section 157ZO commits an offence and is liable, on 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; or
- (b) in the case of a body corporate, to a fine not exceeding \$500,000.

Section 157ZP: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZP: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **157ZQ Application of Official Information Act 1982, etc**

Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information to which section 157ZO applies, whether or not that information has been published or disclosed to any person under that section.

Section 157ZQ: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### *Offences and penalties*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZR Offences by deposit takers against this Part**

Every deposit taker who breaches any of the following sections commits an offence:

- (a) section 157I (which relates to the requirement to have a current credit rating):
- (b) section 157L (which relates to requirements concerning the governance of deposit takers):
- (c) section 157M (which relates to the requirement to have and comply with a risk management programme):
- (d) section 157N (which relates to the requirement to provide a copy of the risk management programme to the trustee and amend the programme as required):
- (e) section 157O (which relates to the obligation to comply with a requirement of the trustee that the deposit taker have its risk management programme audited):
- (f) section 157Q (which relates to the obligation to ensure that the trust deed complies with any requirement imposed by regulations to set out the minimum capital that the deposit taker is required to maintain):
- (g) section 157R (which relates to the obligation to maintain minimum capital of not less than the amount prescribed by regulations):
- (h) section 157T (which relates to the obligation to ensure that the trust deed complies with any requirement imposed by regulations to include a capital ratio in the trust deed):
- (i) section 157U (which relates to the obligation to maintain any capital ratio required to be included in the trust deed by regulations):
- (j) section 157X (which relates to the obligation to ensure that the trust deed complies with any requirement im-

- posed by regulations to include a maximum limit on exposures to related parties):
- (k) section 157Y (which relates to the obligation not to exceed any maximum limit on exposures to related parties required by regulations to be included in the trust deed);
  - (l) section 157ZA (which relates to the obligation to ensure the trust deed complies with any requirement imposed by regulations to include liquidity requirements in the trust deed);
  - (m) section 157ZB (which relates to the obligation to comply with any liquidity requirements required by regulations to be included in the trust deed).

Section 157ZR: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

#### **157ZS Other offences by deposit takers against this Part**

Every deposit taker commits an offence who—

- (a) fails to provide a report to the Bank if required to do so under section 157ZI; or
- (b) fails to provide access to accounting and other records of the deposit taker or fails to provide information relating to those records if requested to do so for the purposes of a report under section 157ZI; or
- (c) fails to provide any information, papers, documents, records, or things as and when required to do so by notice under section 157ZJ; or
- (d) fails, as and when required by this Part or any regulations made under this Part, to deliver any paper, document, record, report, copy, or thing; or
- (e) fails, as and when required by this Part or any regulations made under this Part, to allow a person to look at a paper, document, record, report, copy, or thing; or
- (f) fails, as and when required to do so by this Part or regulations made under this Part, to supply any information; or
- (g) makes any statement or supplies any paper, document, record, copy, or thing to the Bank knowing that it is false or misleading in a material particular; or

- (h) without reasonable excuse, obstructs or hinders an authorised person in the execution of any powers conferred on that person by or under this Part or any regulations made under this Part.

Section 157ZS: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZT Defence for deposit takers charged with offences against this Part**

- (1) In any prosecution of a deposit taker for an offence against section 157ZR or 157ZS, it is a defence if the deposit taker proves that—
- (a) the contravention was due to the act or omission of another person, or some other cause beyond the deposit taker's control; and
  - (b) the deposit taker took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1)(a), the term **another person** does not include a director, employee, or agent of the deposit taker.
- (3) A deposit taker is not, without the leave of the court, entitled as part of a defence provided by this section to rely on any of the matters specified in subsection (1)(a) unless the deposit taker has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecution a notice in writing identifying the act, omission, or cause relied on by the deposit taker.

Section 157ZT: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZU Power of court to discharge deposit taker**

- (1) If a deposit taker is charged with an offence against section 157ZR or 157ZS, the court may direct that the charge against the defendant be dismissed if the court considers that the alleged contravention was in respect of matters that were immaterial.
- (2) A direction under subsection (1) may be made at any stage of the proceeding—

- (a) on the motion of the court or on the application of the defendant; and
  - (b) after giving both the prosecutor and the defendant a reasonable opportunity to be heard on the matter.
- (3) The dismissal of a charge under this section is deemed to be an acquittal.
- (4) Nothing in this section limits sections 106 to 109 of the Sentencing Act 2002.

Section 157ZU: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZU(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157ZU(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **157ZV Liability of directors**

If a body corporate is convicted of an offence under section 157ZR or 157ZS, every director of the body corporate is guilty of an offence if it is proved—

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

Section 157ZV: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZW Offences by trustees against this Part**

- (1) Every trustee who breaches any of the following sections commits an offence:
- (a) section 157Q (which relates to the obligation to ensure that the trust deed complies with a requirement imposed by regulations to set out the minimum capital that the deposit taker is required to maintain);
  - (b) section 157T (which relates to the obligation to ensure that the trust deed complies with a requirement im-

- posed by regulations to include a capital ratio in the trust deed);
- (c) section 157X (which relates to the obligation to ensure that the trust deed complies with a requirement imposed by regulations to include a maximum limit on exposures to related parties);
  - (d) section 157ZA (which relates to the obligation to ensure the trust deed complies with a requirement imposed by regulations to include liquidity requirements in the trust deed);
  - (e) section 157ZE (which relates to the obligation to provide an attestation to the Bank or reasons why an attestation cannot be provided);
  - (f) section 157ZF (which relates to the obligation to report to the Bank any non-compliance or likely non-compliance by the deposit taker);
  - (g) section 157ZG (which relates to the obligation to provide information to the Bank in certain circumstances).
- (2) Every trustee commits an offence who makes a statement to the Bank in relation to its obligations to the Bank, including providing an attestation, knowing it to be false or misleading in a material particular.

Section 157ZW: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **157ZX Penalties for offences**

- (1) Every deposit taker who commits an offence under section 157ZR(a) is liable, on 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, or both; or
  - (b) in the case of a body corporate, to a fine not exceeding \$2,000,000.
- (2) Every deposit taker who commits an offence under any other provision in section 157ZR or 157ZS is liable, on 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, or both; or

- (b) in the case of a body corporate, to a fine not exceeding \$1,000,000.
- (3) Every director who commits an offence under section 157ZV is liable, on conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$100,000, or both.
- (4) Every trustee who commits an offence under any provision in section 157ZW is liable, on conviction, to a fine not exceeding \$200,000.

Section 157ZX: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 157ZX(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157ZX(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157ZX(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 157ZX(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Miscellaneous*

Heading: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

## **157ZY Matters relating to regulation-making powers under this Part**

Regulations made under section 157K, 157P, 157S, 157V, or 157Z may—

- (a) prescribe clauses relating to all or any of the matters referred to in those sections that are deemed to be contained in, or adopted by, trust deeds; and
- (b) prescribe requirements or clauses that apply to all deposit takers; and
- (c) prescribe different requirements or clauses for different classes of deposit takers; and
- (d) prescribe different requirements or clauses for particular deposit takers.

Section 157ZY: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157ZZ Bank must review and report on operation of this Part**

- (1) The Bank must, not later than 5 years after the commencement of this section,—
  - (a) review the operation of this Part since the commencement of this section; and
  - (b) prepare a report on the review for the Minister.
- (2) The report on the review must include recommendations to the Minister on whether any amendments to the Act concerning the matters dealt with in this Part are necessary or desirable.
- (3) As soon as practicable after receiving the report, the Minister must present a copy of that report to the House of Representatives.

Section 157ZZ: inserted, on 10 September 2008, by section 17 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**Part 6**  
**Financial and accountability matters**

Part 6 heading: replaced, on 10 September 2008, by section 21 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**157 Financial year**

The Bank's financial year ends on the day on which the Government's financial year ends.

Section 157: replaced, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

*Income and expenditure*

**158 Meaning of notional surplus income**

*[Repealed]*

Section 158: repealed, on 10 September 2008, by section 18 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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;
  - (da) Part 5D;
  - (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.

Section 159(1): replaced, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 159(1)(da): inserted, on 10 September 2008, by section 19 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

## **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;
- (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.

Section 160(a): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 160(b): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 160(c): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

## **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 Determination of annual dividend**

- (1) The Bank must, as soon as practicable after the end of each financial year, recommend to the Minister the amount appropriately payable by the Bank to the Crown as an annual dividend in respect of the financial year.
- (2) The Bank must determine the amount it recommends to the Minister under subsection (1) in accordance with the principles set out in its statement of intent.
- (3) The Minister must determine the amount that the Bank must pay to the Crown as an annual dividend in respect of the financial year having regard to—
  - (a) the recommendation of the Bank; and
  - (b) the views of the Board of the Bank; and
  - (c) any other relevant matters.
- (4) The Bank must publish in its annual report—
  - (a) the amount it recommends to the Minister under subsection (1); and
  - (b) the determination made by the Minister under subsection (3).

Section 162: replaced, on 10 September 2008, by section 20 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Accountability documents*

Heading: inserted, on 10 September 2008, by section 22 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**162AA Purpose of accountability documents**

The purpose of the 3 accountability documents required under this Part is as follows:

- (a) statement of intent: to promote the public accountability of the Bank by—
  - (i) enabling the Crown to participate in the process of setting the Bank's medium-term intentions and undertakings; and
  - (ii) setting out for the House of Representatives those intentions and undertakings; and
  - (iii) providing a base against which the Bank's actual performance can be later assessed;
- (b) annual report: to—
  - (i) report on the activities of the Bank during the previous year; and
  - (ii) assess those activities against the intentions and undertakings set out in the latest statement of intent; and
  - (iii) ensure the accountability of the Bank for the funds available to it;
- (c) financial stability report: to—
  - (i) report on matters relating to the soundness and efficiency of the financial system and other matters associated with the Bank's statutory prudential purposes; and
  - (ii) allow assessments to be made of the effectiveness of the Bank's use of its powers to achieve its statutory prudential purposes.

Compare: 2004 No 115 s 138

Section 162AA: inserted, on 10 September 2008, by section 22 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**162AB Assessment of regulatory impacts of policies**

- (1) The Bank must—

- (a) assess the expected regulatory impacts of any policy that it intends to adopt under Part 5 and Parts 5B to 5D and under the Insurance (Prudential Supervision) Act 2010; and
  - (b) assess the regulatory impacts of the policies adopted and applied under Part 5 and Parts 5B to 5D and under the Insurance (Prudential Supervision) Act 2010 at intervals appropriate to the nature of the policy being assessed; and
  - (c) give reports on the assessments to the Minister.
- (2) Subsection (1) does not apply in respect of any policy that is of a minor or technical nature.
- (3) The Bank may provide reports on the assessments of regulatory impacts to the Minister—
- (a) as part of an accountability document or other report; or
  - (b) as a stand-alone report prepared following a request by the Minister or on the Bank's own initiative.
- (4) The Bank must publish every report on the assessment of regulatory impacts on an Internet site maintained by, or on behalf of, the Bank.
- (5) However, the Bank may omit information from any report published if it is satisfied on reasonable grounds that it is proper to omit the information on the ground of commercial confidentiality relating to a financial institution.
- (6) To avoid doubt, the publication of an accountability document that includes a report on the assessments of regulatory impacts satisfies the obligation in subsection (4).

Section 162AB: inserted, on 10 September 2008, by section 22 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

Section 162AB(1)(a): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

Section 162AB(1)(b): amended, on 8 September 2010, by section 241(1) of the Insurance (Prudential Supervision) Act 2010 (2010 No 111).

#### *Statement of intent*

Heading: inserted, on 10 September 2008, by section 23 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **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.

Section 162A: inserted, on 25 January 2005, by section 37(1) of the 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 specific impacts, outcomes, or objectives that the Bank seeks to achieve or contribute to;
  - (d) how the Bank intends to perform its functions and conduct its operations to achieve those impacts, outcomes, or objectives;
  - (da) if a direction has been given under section 68B, how the Bank has had regard to the direction;
  - (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;
  - (g) a statement of the principles in accordance with which the Bank must determine the amount it recommends to the Minister as appropriately payable by the Bank to the Crown as an annual dividend;
  - (h) the main financial and non-financial measures and standards by which the future performance of the Bank may be judged;
  - (i) the matters on which the Bank will consult or notify the Minister before making a decision, the matters on which it will report to its Minister, and the frequency of reporting;

- (j) any other matters that are reasonably necessary to achieve an understanding of the Bank's intentions and direction.
- (2) Each statement of intent must be dated and signed by the Governor and the Deputy Chief Executive.
- Section 162B: inserted, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).
- Section 162B(1)(c): replaced, on 10 September 2008, by section 24(1) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(d): replaced, on 10 September 2008, by section 24(1) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(da): inserted, on 10 September 2008, by section 24(1) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(g): inserted, on 10 September 2008, by section 24(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(h): inserted, on 10 September 2008, by section 24(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(i): inserted, on 10 September 2008, by section 24(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).
- Section 162B(1)(j): inserted, on 10 September 2008, by section 24(2) of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **162C Process for providing statement of intent to Minister**

- (1) 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.
- (2) If the Minister's comments include comment on the financial sector regulatory outcomes set out in the Bank's draft statement of intent, the Bank must, when providing its final statement of intent to the Minister, also provide a response to the Minister's comments that demonstrates how the Bank has taken those comments into account in formulating its objectives.

Section 162C: inserted, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 162C(2): inserted, on 10 September 2008, by section 25 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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.

Section 162D: inserted, on 25 January 2005, by section 37(1) of the 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.

Section 162E: inserted, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

*Annual reports*

Heading: inserted, on 10 September 2008, by section 26 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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—

- (aaa) an assessment against the intentions, measures, and standards set out in the statement of intent prepared at the beginning of the financial year; and
- (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: replaced, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

Section 163(2)(aaa): inserted, on 10 September 2008, by section 27 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

### **163A Bank not Crown entity**

The Bank is not a Crown entity for the purposes of the Crown Entities Act 2004.

Section 163A: inserted, on 25 January 2005, by section 37(1) of the 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).
- (2) The financial statements shall show separately—
- (a) any payments made by the Bank under section 21(1); and
  - (b) any payments made by the Minister to the Bank under section 21(2).

**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.

*Financial stability reports*

Heading: inserted, on 10 September 2008, by section 28 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**165A Financial stability reports**

- (1) The Bank must, not less than twice in every calendar year,—
  - (a) deliver a financial stability report to the Minister; and
  - (b) publish the report on an Internet site maintained by, or on behalf of, the Bank.
- (2) A financial stability report must—
  - (a) report on the soundness and efficiency of the financial system and other matters associated with the Bank's statutory prudential purposes; and
  - (b) contain the information necessary to allow an assessment to be made of the activities undertaken by the Bank to achieve its statutory prudential purposes under this Act and any other enactment.
- (3) The Minister must, as soon as practicable after receiving the report, present it to the House of Representatives.

Section 165A: inserted, on 10 September 2008, by section 28 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

*Audits*

Heading: inserted, on 10 September 2008, by section 29 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**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.

Section 166: replaced, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

**167 Performance audit**

- (1) The Minister may, from time to time, appoint 1 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) limits or affects section 105.
- (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.

Section 167(3): replaced, on 25 January 2005, by section 37(1) of the 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: repealed, on 30 June 1995, by section 2(4) of the 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;
  - (fa) prescribing information for the purposes of section 69(2A)(c);
  - (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

Section 173(fa): inserted, on 4 September 2013, by section 5 of the Reserve Bank of New Zealand Amendment Act 2013 (2013 No 62).

#### **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) limits section 173(j).

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.

Section 175A: inserted, on 21 August 2003, by section 44 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

#### **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.

Section 175B: inserted, on 21 August 2003, by section 44 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

### 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 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: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 176: amended, on 24 March 1995, by section 10 of the Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5).

### 177 Time for filing charging document

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act,—

- (a) in the case of an offence against section 28 or 30, ends on the date that is 3 years after the date on which the offence was committed; or
- (b) in any other case, ends on the date that is 6 years after the date on which the offence was committed.

Section 177: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 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 performance in good faith of that person's functions, duties, or powers under this Act.

Section 179: replaced, on 21 August 2003, by section 46 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 179(1)(c): amended, on 1 November 2006, by section 9 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

Section 179(1)(d): inserted, on 1 November 2006, by section 9 of the 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 a 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: inserted, on 21 August 2003, by section 47 of the Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46).

Section 179A(2)(f): inserted, on 1 November 2006, by section 10 of the Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51).

Section 179A(3): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

## **180 Amendment to Income Tax Act 1976**

*[Repealed]*

Section 180: repealed, on 1 April 1995, by section YB 3(1) of the Income Tax Amendment Act 1994 (1994 No 164).

**181 Amendments to Securities Act 1978**

- (1) *[Repealed]*
- (2) *[Expired]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Expired]*
- (7) *[Repealed]*
- (8) *[Repealed]*
- (9) *[Repealed]*
- (10) *[Repealed]*
- (11) Section 48 of the Securities Amendment Act 1988 is hereby consequentially repealed.

Section 181(1): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(2): expired, on 31 March 1990, by section 181(3).

Section 181(3): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(4): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(5): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(6): expired, on 30 June 1996, by clause 2 of the Reserve Bank of New Zealand Act Commencement Order 1995 (SR 1995/249).

Section 181(7): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(8): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(9): repealed, on 1 October 1997, by section 6(6) of the Securities Amendment Act 1996 (1996 No 100).

Section 181(10): repealed, on 1 October 1997, by section 16(2)(b) of the Securities Amendment Act 1996 (1996 No 100).

**182 Amendments to Superannuation Schemes Act 1989**

*Amendment(s) incorporated in the Act(s).*

**183 Amendments to Trustee Banks Restructuring Act 1988**

*[Repealed]*

Section 183: repealed, on 21 May 1999, by section 5 of the Trustee Banks Restructuring Act Repeal Act 1999 (1999 No 53).

**184 Amendment to Securities Amendment Act 1988**  
*Amendment(s) incorporated in the Act(s).***185 Consequential amendments**

The enactments listed in Schedule 1 are hereby amended in the manner indicated in that schedule.

**186 Repeals and savings**

- (1) The enactments listed in Schedule 2 are hereby repealed.
- (2) The regulations and the proclamation specified in Schedule 2 are hereby revoked.
- (3) Without limiting the Interpretation Act 1999, 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) *[Repealed]*  
Section 186(4): repealed, on 1 July 1994, by section 63 of the 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 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.

**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), 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) 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 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 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) is entitled to compensation for loss of office as a director.
- (5) Nothing in subsection (3) prevents a person who vacates office under that subsection from being appointed under section 54 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), continue in force in

relation to the financial year of the Bank ending on 31 March 1990.

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**Schedule 1**  
**Enactments amended**

s 185

**Corporations Investigation and Management Act 1989 (1989 No 11)**

*Amendment(s) incorporated in the Act(s).*

**Housing Corporation Act 1974 (1974 No 19)**  
*[Repealed]*

**International Finance Agreements Act 1961 (1961 No 3)**

*Amendment(s) incorporated in the Act(s).*

**Overseas Investment Act 1973 (1973 No 14)**  
*Amendment(s) incorporated in the Act(s).*

**Stamp and Cheque Duties Act 1971 (1971 No 51)**

*Amendment(s) incorporated in the Act(s).*

Schedule 1 Housing Corporation Act 1974: repealed, on 1 July 2001, by section 25(1)(c) of the Housing Corporation Amendment Act 2001 (2001 No 37).

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**Schedule 2** s 186(1)  
**Enactments repealed**

## **Decimal Currency Act 1964 (1964 No 27) (RS Vol 2, p 77)**

*Amendment(s) incorporated in the Act(s).*

**Decimal Currency Amendment Act 1965 (1965 No 124) (RS Vol 2, p 294)**

*Amendment(s) incorporated in the Act(s).*

## **Decimal Currency Amendment Act 1967 (1967 No 3) (RS Vol 2, p 301)**

*Amendment(s) incorporated in the Act(s).*

## **Decimal Currency Amendment Act 1973 (1973 No 56) (RS Vol 2, p 302)**

**International Finance Agreements Amendment Act 1976 (1976 No 25) (RS Vol 16, p 374)**

*Amendment(s) incorporated in the Act(s)*

## **Reserve Bank of New Zealand Act 1964 (1964 No 134) (RS Vol 16, p 455)**

**Reserve Bank of New Zealand Amendment Act 1968 (1968 No 135) (RS Vol 16, p 509)**

## **Reserve Bank of New Zealand Amendment Act 1970 (1970 No 2) (RS Vol 16, p 510)**

**Reserve Bank of New Zealand Amendment Act 1971 (1971 No 125) (RS Vol 16, p 510)**

**Reserve Bank of New Zealand Amendment Act 1973 (1973 No 16) (RS Vol 16, p 511)**

**Reserve Bank of New Zealand Amendment Act 1974 (1974 No 118) (RS Vol 16, p 513)**

**Reserve Bank of New Zealand Amendment Act 1975 (1975  
No 19) (RS Vol 16, p 514)**

**Reserve Bank of New Zealand Amendment Act 1977 (1977  
No 68) (RS Vol 16, p 514)**

**Reserve Bank of New Zealand Amendment Act 1980 (1980  
No 138) (RS Vol 16, p 517)**

**Reserve Bank of New Zealand Amendment Act 1982 (1982  
No 168) (RS Vol 16, p 517)**

**Reserve Bank of New Zealand Amendment Act 1986 (1986  
No 131)**

Regulations revoked

**Exchange Control Regulations 1985 (SR 1985/4)**

**Exchange Control Regulations 1985, Amendment No 7  
(SR 1986/294)**

**Exchange Control Regulations 1985, Amendment No 9  
(SR 1987/60)**

**Exchange Control Regulations 1985, Amendment No 15  
(SR 1988/84)**

**Reserve Bank of New Zealand Act (Fees) Regulations 1987  
(SR 1987/108)**

**Reserve Bank of New Zealand Amendment Act Commencement  
Order 1988 (SR 1988/77)**

**Reserve Bank of New Zealand Order 1988 (SR 1988/192)**

Proclamation revoked

**Decimal Currency (End of Transitional Period) Proclamation  
1986 (SR 1968/86)**

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**Schedule 3**ss 81AA(3), 157S(3),  
157W(3)**General provisions relating to material incorporated by reference**

Schedule 3: inserted, on 10 September 2008, by section 30 of the Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59).

**1 Effect of material incorporated by reference**

- (1) This clause and clauses 2 to 7 apply to material incorporated by reference in—  
(a) an Order in Council made under section 81; and  
(b) regulations made under Part 5D.
- (2) Material incorporated by reference in an Order in Council made under section 81 or regulations has effect as part of the Order in Council or regulations.

**2 Effect of amendments to, or replacement of, material incorporated by reference**

An amendment to, or replacement of, material incorporated by reference in an Order in Council or regulations has legal effect as part of that instrument only if an Order in Council made under section 81 or regulations made under Part 5D after the making of that instrument state that the particular amendment or replacement has that effect.

**3 Proof of material incorporated by reference**

- (1) A copy of the material incorporated by reference in an Order in Council or regulations, including any amendment to, or replacement of, the material, must be—  
(a) certified as a correct copy of the material by the Governor; and  
(b) retained by the Governor.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the Order in Council or regulations of the material.

#### **4 Effect of expiry or revocation of material incorporated by reference**

Material incorporated by reference in an Order in Council or regulations that expires or is revoked, or that ceases to have effect, ceases to have legal effect as part of the Order in Council or regulations only if an Order in Council made under section 81 or regulations made under Part 5D state that the material is revoked or ceases to have legal effect.

## **5 Access to material incorporated by reference**

(1) The Governor—

- (a) must make the material referred to in subclause (2) available for inspection during working hours free of charge at the head office of the Bank and at any other places that the Governor determines are appropriate; and
  - (b) must make copies available for purchase at a reasonable price; and
  - (c) may make copies of the material available in any other way that the Governor considers appropriate in the circumstances (for example, on an Internet website); and
  - (d) must give notice in the *Gazette* stating that—
    - (i) the material is incorporated in the regulations and the date on which the regulations were made; and
    - (ii) the material is available for inspection during working hours, free of charge, and the location of the place or places at which it can be inspected; and
    - (iii) copies of the material can be purchased and the location of the place or places at which they can be purchased; and
    - (iv) if copies of the material are available under paragraph (c), the material is available in other ways, and giving the details of how and where it can be accessed and obtained.

(2) The material is—

- (a) a framework, standard, specification, or requirement incorporated by reference in an Order in Council made under section 81;

- (b) any amendment to, or replacement of,—
    - (i) the framework, standard, specification, or requirement incorporated by reference in the Order in Council; or
    - (ii) the framework, standard, specification, or requirement referred to in paragraph (a) with the amendments or replacement framework, standard, specification, or requirement incorporated within it;
  - (c) a framework incorporated by reference in regulations made under section 157S or 157V;
  - (d) any amendment to, or replacement of,—
    - (i) the framework that is incorporated in the regulations; or
    - (ii) the framework referred to in paragraph (c) with the amendments or replacement framework incorporated within it.
- (3) A failure to comply with this clause does not invalidate—
  - (a) an Order in Council that incorporates a framework, standard, specification, or requirement by reference; or
  - (b) regulations that incorporate a framework by reference.

## **6      Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference**

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in an Order in Council or regulations or to an amendment to, or replacement of, that material.

## **7      Application of Regulations (Disallowance) Act 1989 to material incorporated by reference**

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in an Order in Council or regulations to be laid before the House of Representatives.
- (2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made

by subclause (1) of this clause, applies to an Order in Council or regulations that incorporate material by reference.

## **Schedule 4**

### **General provisions relating to search warrants issued under Part 5D**

[Repealed]

Schedule 4: repealed, on 1 October 2012, by section 298(7) of the Search and Surveillance Act 2012 (2012 No 24).

## **Reserve Bank of New Zealand Amendment Act 1993**

Public Act    1993 No 118  
Date of assent    28 September 1993  
Commencement    see section 1(2)

### **1      Short Title and commencement**

- (1) This Act may be cited as the Reserve Bank of New Zealand Amendment Act 1993, and shall be read together with and deemed part of the Reserve Bank of New Zealand Act 1989 (hereinafter referred to as “the principal Act”).
- (2) This Act shall come into force on 1 July 1994.

### **5      Transitional provisions**

Nothing in section 4 applies to or affects—

- (a) a registered bank that was subject to statutory management under the principal Act immediately before the commencement of this Act;
- (b) any transaction entered into by a registered bank or anything done by any person before the commencement of this Act—

and, in any such case, sections 308 (except subsection (1)(d)), 309 to 311C, and 319 to 321 of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply to the registered bank in all respects and with such modifications as may be necessary, as if—

- (c) the registered bank were a company that was being wound up under the Companies Act 1955; and
- (d) the statutory manager of the registered bank was the liquidator of the company; and
- (e) the date on which the registered bank became subject to statutory management was the date of the commencement of the winding up.
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## **Reserve Bank of New Zealand Amendment Act 2003**

Public Act 2003 No 46  
Date of assent 20 August 2003  
Commencement see section 2

### **1 Title**

- (1) This Act is the Reserve Bank of New Zealand Amendment Act 2003.
- (2) In this Act, the Reserve Bank of New Zealand Act 1989 is called “the principal Act”.

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 3 Miscellaneous**

### *Transitional provisions*

#### **50 Savings relating to authorisations or consents under**

#### **Part 4 of principal Act**

Any authorisations or consents relating to the use of a restricted word that were granted under section 65 of the principal Act before the commencement of this Act remain in force.

#### **51 Temporary exemption from Part 4 of principal Act**

- (1) This section applies to any person who,—
  - (a) immediately before the commencement of this Act, was lawfully entitled to use, or was lawfully using, a name or title that included a restricted word; and
  - (b) after the commencement of this Act, can no longer lawfully use that name or title.
- (2) A person to whom this section applies may, despite anything in Part 4 of the principal Act, continue to use that name or title for a period of 6 months commencing on the date of commencement of this Act.

**52 Existing applications**

An application for registration as a registered bank under the principal Act that has been made, but not determined or withdrawn, before the date of commencement of this Act must continue to be dealt with in accordance with the principal Act and any regulations made under that Act as if this Act had not been enacted.

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## **Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013**

Public Act 2013 No 103  
Date of assent 3 December 2013  
Commencement see section 2

### **1 Title**

This Act is the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013.

### **2 Commencement**

This Act comes into force on the 7th day after the date on which it receives the Royal assent.

### **3 Principal Act**

This Act amends the Reserve Bank of New Zealand Act 1989 (the **principal Act**).

## **Part 2 Transitional provisions and amendments to other Acts**

### **11 Transitional provisions**

- (1) The amendments made by this Act apply in relation to existing covered bond programmes and issuers on and from the date that is 9 months after this Act comes into force.
- (2) However, despite subsection (1), an issuer may, in relation to an existing covered bond programme, make an application under section 139E of the principal Act (as inserted by section 9 of this Act) at any time on or after the date on which this Act comes into force and, in that case,—
- (a) section 139E(4) and (5)(a) and (b) of the principal Act (as inserted by section 9 of this Act) apply on and from the date on which the application is approved or declined under section 139G of the principal Act (as inserted by section 9 of this Act); and

- (b) all other amendments made by this Act apply on and from the date of the application.
  - (3) To avoid doubt, on and from the date specified in subsection (1),—
    - (a) all amendments made by this Act apply in relation to existing covered bond programmes; and
    - (b) covered bonds must not be issued under an existing covered bond programme unless the programme is registered under section 139G of the principal Act (as inserted by section 9 of this Act).
  - (4) In this section, **existing covered bond programme** means a covered bond programme that was established before this Act came into force.
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## **Reprints notes**

### **1    General**

This is a reprint of the Reserve Bank of New Zealand Act 1989 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2    Legal status**

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

### **3    Editorial and format changes**

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4    Amendments incorporated in this reprint**

Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013 (2013 No 103)

Companies Amendment Act 2013 (2013 No 111): section 14

Reserve Bank of New Zealand Amendment Act 2013 (2013 No 62)

Legislation Act 2012 (2012 No 119): section 77(3)

Search and Surveillance Act 2012 (2012 No 24): sections 297, 298

Criminal Procedure Act 2011 (2011 No 81): section 413

Financial Markets Authority Act 2011 (2011 No 5): sections 82, 84(3)

Insurance (Prudential Supervision) Act 2010 (2010 No 111): section 241(1)

Reserve Bank of New Zealand Amendment Act 2009 (2009 No 53)

Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 (2008 No 64): section 15

Reserve Bank of New Zealand Amendment Act 2008 (2008 No 59)

Property Law Act 2007 (2007 No 91): section 364(1)

Reserve Bank of New Zealand Amendment Act 2007 (2007 No 76)

Evidence Act 2006 (2006 No 69): section 216

Companies Amendment Act (No 2) 2006 (2006 No 62): section 17

Companies Amendment Act 2006 (2006 No 56): section 41  
Insolvency Act 2006 (2006 No 55): section 445  
Reserve Bank of New Zealand Amendment Act 2006 (2006 No 51)  
Securities Amendment Act 2006 (2006 No 46): section 25  
Overseas Investment Act 2005 (2005 No 82): section 75  
State Sector Amendment Act (No 2) 2004 (2004 No 114): section 19(1)  
Public Finance Amendment Act 2004 (2004 No 113): section 37(1)  
Reserve Bank of New Zealand Amendment Act 2003 (2003 No 46)  
Human Rights Amendment Act 2001 (2001 No 96): section 70(1)  
Housing Corporation Amendment Act 2001 (2001 No 37): section 25(1)(c)  
Public Audit Act 2001 (2001 No 10): section 53  
Personal Property Securities Act 1999 (1999 No 126): section 191(1)  
Trustee Banks Restructuring Act Repeal Act 1999 (1999 No 53): section 5  
Reserve Bank of New Zealand Amendment Act 1999 (1999 No 22)  
Treasurer (Statutory References) Act 1997 (1997 No 20): section 2  
Financial Reporting Amendment Act 1997 (1997 No 17): section 6  
Securities Amendment Act 1996 (1996 No 100): sections 6(6), 16(2)(b)  
Reserve Bank of New Zealand Act Commencement Order 1995 (SR 1995/249)  
Reserve Bank of New Zealand Amendment Act (No 2) 1995 (1995 No 34)  
Banking Act Repeal Act 1995 (1995 No 32): section 2(4)  
Reserve Bank of New Zealand Amendment Act 1995 (1995 No 5)  
Income Tax Act 1994 (1994 No 164): section YB 3(1)  
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16):  
section 2  
Reserve Bank of New Zealand Amendment Act 1993 (1993 No 118)  
Companies Amendment Act 1993 (1993 No 108): section 63  
Reserve Bank of New Zealand Amendment Act 1992 (1992 No 32)  
Reserve Bank of New Zealand Amendment Act 1990 (1990 No 96)  
Public Finance Act 1989 (1989 No 44): section 65R(3)

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