



Reserve Bank of New Zealand Amendment Act 2009

Public Act 2009 No 53
Date of assent 23 November 2009
Commencement see section 2

Contents

		Page
1	Title	4
2	Commencement	4

Part 1

Reserve Bank of New Zealand Act 1989

3	Principal Act amended	4
4	Interpretation	4
5	Moratorium	5
6	New Part 5C substituted	5

Part 5C

Designated settlement systems

General

156K	Exercise of powers under this Part	5
156L	Commission may exercise powers under Securities Act 1978	6
156M	Definitions for this Part	6

Designation

156N	Designation of settlement system	10
156O	Joint regulators' recommendations subject to procedure in sections 156Y to 156ZA	11

Effect of designation

156P	Application of this Part to pure payment systems	11
------	--	----

156Q	Rules of designated settlement system are valid and enforceable	12
156R	Settlements must not be reversed, etc	13
156S	Limits on application of section 156R(1)	14
156T	Netting is valid and enforceable	15
156U	Interrelationship between netting and Companies Act 1993 and Insolvency Act 2006	15
156V	Underlying transactions, settlements, and limits on effect of sections 156Q, 156R, and 156T	15
156W	Interrelationship with other enactments	17
156X	Transfer of property in accordance with rules is effective	17
<i>Procedure for making designation</i>		
156Y	Application for designation	17
156Z	Consideration of application	18
156ZA	Decision on application	19
<i>Amendments to rules</i>		
156ZB	Joint regulators must be notified of proposed amendments to rules	19
156ZC	Proposed amendments to rules may be disallowed	19
<i>Variation and revocation of designation</i>		
156ZD	Variation of designation	20
156ZE	Revocation of designation	21
156ZF	Settlement and netting not affected by variation or revocation of designation	21
156ZG	Application for variation or revocation of designation	21
156ZH	Either joint regulator may independently begin review of designation	21
156ZI	Matters joint regulators may have regard to in recommending variation or revocation of designation	22
156ZJ	Procedure for variation or revocation of designation	23
<i>Obligations to give notice and supply information</i>		
156ZK	Contact person must be notified of insolvency event	23
156ZL	Supply of information relating to designated settlement system	24

	<i>Disclosure of information</i>	
156ZM	Disclosure of information between joint regulators	24
156ZN	Disclosure of information to third parties	25
156ZO	Limits on further disclosure of information	26
156ZP	Application of other enactments to information published or disclosed under section 156ZN	26
	<i>Penalties for offences against this Part</i>	
156ZQ	Penalties for offences	27
	Part 2	
	Savings provision and amendments to other Acts	
	<i>Savings provision</i>	
7	Amendments do not affect existing designations	27
	<i>Amendments to Securities Act 1978</i>	
8	Amendments to Securities Act 1978	28
9	Functions of Commission	28
10	Issuers to issue certificates evidencing securities	28
11	Schedule 1 amended	29
	<i>Amendments to Corporations (Investigation and Management) Act 1989</i>	
12	Amendments to Corporations (Investigation and Management) Act 1989	29
13	Moratorium	29
14	Statutory manager may suspend payment of money owing	29
	<i>Amendments to Companies Act 1993</i>	
15	Amendments to Companies Act 1993	29
16	Interpretation	30
17	Transfer of shares under approved system	30
18	Share certificates	30
19	Power to disclaim onerous property	31
	<i>Amendments to Personal Property Securities Act 1999</i>	
20	Amendments to Personal Property Securities Act 1999	31
21	Priority of purchase money security interest in collateral or its proceeds, other than inventory or intangibles	31
22	New heading and section 103A inserted	31

*Priority of interests of certain operators of
designated settlement system*

103A	Priority of interests of certain operators of designated settlement system	31
------	---	----

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Reserve Bank of New Zealand Amendment Act 2009.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1**Reserve Bank of New Zealand Act 1989****3 Principal Act amended**

This Act amends the Reserve Bank of New Zealand Act 1989.

4 Interpretation

- (1) The definition of **clearing house** in section 2(1) is repealed.
- (2) Section 2(1) is amended by repealing the definition of **designated payment system** and substituting the following definition:
“**designated settlement system** has the meaning set out in section 156M”.
- (3) Section 2(1) is amended by repealing the definition of **operator** and substituting the following definition:
“**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”.
- (4) Section 2(1) is amended by repealing the definition of **participant** and substituting the following definition:

“**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”.

- (5) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

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

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

5 Moratorium

Section 122(8) is amended by omitting “designated payment system” in each place where it appears and substituting in each case “designated settlement system”.

6 New Part 5C substituted

Part 5C is repealed and the following Part substituted:

“Part 5C

“Designated settlement systems

“General

“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 Commission 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).

“156L Commission may exercise powers under Securities Act 1978

- “(1) The Commission may exercise any of its powers under the Securities Act 1978 in performing its functions and duties, and exercising its powers, under this Act, and Part 3 of the Securities Act 1978 applies with all necessary modifications to its decisions and proceedings under this Act.
- “(2) However, for the purposes of this Part, the Commission may exercise its powers under sections 67 and 67A of the Securities Act 1978 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.

“156M Definitions for this Part

- “(1) In this Part, unless the context otherwise requires,—
 - “**Commission** means the Securities Commission established under Part 1 of the Securities Act 1978
 - “**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 Commission
 - “**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 settlement 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 un-

able, 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).

*“Designation***“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 Commission 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 not regulations for the purposes of the Regulations (Disallowance) Act 1989 and the Acts and Regulations Publication Act 1989; 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.

“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).

“Effect of designation

“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 Commission; 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 Commission 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.

“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.

“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

“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.

“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.

“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.

“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.

“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.

“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.

*“Procedure for making designation***“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.

“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.

“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.

“Amendments to rules

“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.

“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.

“Variation and revocation of designation

“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.

“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.

“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.

“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*.

“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).

“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.

“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.

*“Obligations to give notice and supply
information*

“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.

“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.

*“Disclosure of information***“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 Commission.
- “(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 Commission in order to enable them to perform their functions and duties, or exercise their powers, under this Part.

“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.

“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.

“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.

*“Penalties for offences against this Part***“156ZQ Penalties for offences**

- “(1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 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).”

Part 2
Savings provision and amendments to
other Acts

Savings provision

7 Amendments do not affect existing designations

- (1) The amendments to the Reserve Bank of New Zealand Act 1989 made by this Act do not amend or affect—
- (a) the designations declared under the Reserve Bank of New Zealand (Designated Payment Systems) Order 2004 (the **Order**); or
 - (b) any variations made to those designations before the date on which this Act came into force.
- (2) However,—
- (a) the settlement systems to which the designations declared under the Order apply must be treated as if they have been specified to be pure payment systems in accordance with section 156N(3)(d), and section 156P applies to those settlement systems accordingly; and
 - (b) any person who is an operator of any of those settlement systems on the date on which this Act comes into force

- must be treated as if that person had been specified as the specified operator of the relevant settlement system in accordance with section 156N(2)(c); and
- (c) any amendment to the rules of those settlement systems, or any variation or revocation of the designation of those settlement systems, made after the date on which this Act came into force must be made in accordance with the Reserve Bank of New Zealand Act 1989 as amended by this Act as if the designations declared under the Order were declared under section 156N of the Reserve Bank of New Zealand Act 1989.

Amendments to Securities Act 1978

8 Amendments to Securities Act 1978

Sections 9 to 11 amend the Securities Act 1978.

9 Functions of Commission

Section 10(1) is amended by inserting the following paragraph after paragraph (d):

- “(da) to keep under review the law and practices relating to settlement systems (as defined in Part 5C of the Reserve Bank of New Zealand Act 1989, but not including any designated settlement system that is declared to be a pure payment system in accordance with section 156N(3)(d)) and to perform the functions and duties, and exercise the powers, given to it under that Part; and”.

10 Issuers to issue certificates evidencing securities

Section 54 is amended by repealing subsections (3) and (4) and substituting the following subsections:

- “(3) Nothing in this section applies to an issuer in respect of securities that are approved for transfer under, or in accordance with the rules of, a system that does not require a certificate for the transfer of securities.
- “(4) In this section,—

“**certificate** means a certificate or any other document that properly evidences the nature, ownership, terms, and conditions of a security

“**system** means—

- “(a) a system authorised or approved under the Securities Transfer Act 1991:
- “(b) a designated settlement system (as defined in section 156M of the Reserve Bank of New Zealand Act 1989).”

11 Schedule 1 amended

Schedule 1 is amended by inserting the following item after the item relating to the Local Government Act 2002: “Part 5C of the Reserve Bank of New Zealand Act 1989”.

Amendments to Corporations (Investigation and Management) Act 1989

12 Amendments to Corporations (Investigation and Management) Act 1989

Sections 13 and 14 amend the Corporations (Investigation and Management) Act 1989.

13 Moratorium

- (1) Section 42(8) is amended by omitting “payment” in each place where it appears and substituting in each case “settlement”.
- (2) Section 42(9) is amended by omitting “156L” and substituting “156M”.

14 Statutory manager may suspend payment of money owing

Section 44(4) is amended by omitting “156R” and substituting “156T”.

Amendments to Companies Act 1993

15 Amendments to Companies Act 1993

Sections 16 to 19 amend the Companies Act 1993.

16 Interpretation

Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**designated settlement system** has the meaning set out in section 156M of the Reserve Bank of New Zealand Act 1989”.

17 Transfer of shares under approved system

- (1) Section 85 is amended by inserting the following subsection after subsection (1):

“(1A) If shares in a company are transferred in accordance with the rules of a designated settlement system, the company may refuse to complete or delay the registration of the transfer of the shares if—

- “(a) the board of the company resolves, within 30 working days of the date on which the settlement was effected, to refuse or delay registration of the transfer, and the resolution sets out in full the reasons for doing so; and
- “(b) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
- “(c) this Act or the constitution of the company expressly permits the board to refuse or delay registration for the reasons stated.”

- (2) Section 85(2) is amended by—

- (a) omitting “subsection (1)” and substituting “subsections (1) and (1A)”; and
- (b) inserting “effected in accordance with the rules of a designated settlement system, or” after “transfer of shares”.

18 Share certificates

Section 95 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Nothing in subsections (1) or (5) applies in relation to a company the shares in which can be transferred in accordance with the rules of a designated settlement system, or under a system authorised or approved under the Securities Transfer Act 1991, that does not require a share certificate for the transfer of shares.”

19 Power to disclaim onerous property

Section 269(2)(b)(iii) is amended by omitting “payment” in each place where it appears and substituting in each case “settlement”.

*Amendments to Personal Property Securities
Act 1999*

20 Amendments to Personal Property Securities Act 1999

Sections 21 and 22 amend the Personal Property Securities Act 1999.

21 Priority of purchase money security interest in collateral or its proceeds, other than inventory or intangibles

Section 73 is amended by adding the following subsection as subsection (2):

“(2) However, section 103A overrides this section.”

22 New heading and section 103A inserted

The following heading and section are inserted after section 103:

*“Priority of interests of certain operators of
designated settlement system*

“103A Priority of interests of certain operators of designated settlement system

“(1) The interest of an operator in personal property has priority over any security interest (including a purchase money security interest) in the same personal property if a participant in a designated settlement system has, in accordance with the rules of that designated settlement system,—

“(a) either—

“(i) granted a security interest in that personal property in favour of the operator; or

“(ii) transferred that personal property, or the operator’s interest in that personal property, to the operator; and

“(b) taken that action for the purpose of, or in connection with, either—

- “(i) effecting a settlement in accordance with the rules of that designated settlement system; or
 - “(ii) mitigating a loss that may be incurred by the operator if the participant defaults.
- “(2) Subsection (3) applies if—
 - “(a) the interest of an operator in personal property has priority under subsection (1); and
 - “(b) that interest is a security interest; and
 - “(c) the relevant participant has defaulted.
- “(3) If this subsection applies, the operator—
 - “(a) does not have to comply with section 114(1) in respect of that personal property; and
 - “(b) may immediately apply the personal property, in accordance with the rules of the designated settlement system,—
 - “(i) to satisfy the participant’s obligations in respect of which the participant is in default; or
 - “(ii) to mitigate any loss incurred by the operator as a result of the participant’s default.
- “(4) Whether a loss has been incurred and whether a participant has defaulted, for the purposes of this section, must be determined by reference to, and in accordance with, the rules of the designated settlement system.
- “(5) This section overrides anything in this Act to the contrary.
- “(6) In this section,—
 - “**operator** means an operator of a designated settlement system who is (and at the time in question remains) specified under section 156N(3)(c) of the Reserve Bank of New Zealand Act 1989 as being an operator to whom this section applies
 - “**participant**—
 - “(a) means a person who has agreed to participate in a settlement system in accordance with the rules of that system; and
 - “(b) includes an operator of a designated settlement system if the designation under section 156N(3)(b) of the Reserve Bank of New Zealand Act 1989 so provides
 - “**rules** means the rules of a designated settlement system, as that term is defined in paragraph (b) of the definition of rules in section 156M of the Reserve Bank of New Zealand Act 1989.

“(7) In this section, **designated settlement system** and **settlement** have the meanings given to them by section 2(1) or 156M of the Reserve Bank of New Zealand Act 1989.”

Legislative history

29 October 2009

Divided from Settlement Systems, Futures, and Emissions Units Bill (Bill 252–2) by committee of the whole House as Bill 252–3A

17 November 2009

Third reading

23 November 2009

Royal assent

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