



Registered Bank Disclosure Regime

Explanatory information on Orders in Council

**Prudential Supervision Department
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Introduction

1. This document provides guidance on some general aspects of the disclosure requirements in order to assist banks to prepare and distribute their disclosure statements.
2. It is important to note that responsibility for complying with the requirements of the disclosure Orders in Council (the “Orders”) rests with the bank and each of its directors and, for a bank incorporated overseas, also with the New Zealand chief executive officer. It is therefore incumbent on them to satisfy themselves that the bank has complied fully with the disclosure requirements, having regard to any legal, accounting or other professional advice they may have received. This document should be read in that context.
3. In this document, unless the context indicates otherwise, references to the premises of a registered bank should be interpreted as including:
 - traditional bank branches and agencies; and
 - any other staffed premises of the registered bank or of an agency of the registered bank (that is, an agency primarily engaged in the business of the registered bank) to which the registered bank’s customers or potential customers have access in order to conduct banking business.

For example, branches or agencies may include supermarket or shopping centre kiosks, or bank franchises.

Form of Disclosure Statements

4. All registered banks are required to publish a disclosure statement every quarter. The content of the disclosure statement required by the Order applicable to each bank varies according to whether it covers the full year accounting period, the half year accounting period, or one of the “off quarters”, i.e. the first and third quarters of a bank’s financial year.
5. The quarterly disclosure statement for an overseas incorporated bank is, for the most part, restricted to the activities of the bank’s New Zealand branch, and of its New Zealand financial reporting group. Overseas incorporated banks are required to publish a separate, additional form of disclosure statement, which consists solely of the most recent published financial statements of the overseas bank and the overseas banking group. This requirement provides a mechanism to ensure that interested parties in New Zealand have timely and easy internet access to the financial statements of the wider bank and banking group of which the New Zealand bank is a part. Paragraphs 31-34 have more information on this requirement. The guidance in paragraphs 6-30 does not apply to disclosure statements which are overseas banks’ published financial statements.

Content of Disclosure Statements

6. The disclosure statements are aimed at those readers who wish to obtain comprehensive corporate, financial and risk-related information on a bank and its banking group.
7. Disclosure for the full year is generally required in respect of the registered bank and the New Zealand banking group, although for some information disclosure is required only in respect of the banking group. At the half year and the off quarters, financial information focuses on the banking group only.
8. Where disclosures are required in respect of the banking group, the group in question is the group used for reporting for the purposes of the Financial Reporting Act 1993, except where the Reserve Bank has specified (by notice in writing to the bank) a different group. The banking group for disclosure purposes will be the same as the banking group used for other banking supervision purposes – such as in respect of a bank's conditions of registration.
9. **Additional disclosures permitted. Flexible format.** The disclosure statement must contain all of the required disclosures, but can also contain whatever additional disclosures the registered bank wishes to make (except that banks are not permitted to include in the disclosure statement information relating to the offer of debt securities to the public). For instance the disclosure statement may be combined with another document published by the bank, such as the bank's annual report. Banks also have discretion as to the disclosure format. For example, disclosures of capital adequacy information need not be in the format set out in the schedules to the Orders. The formats used in the schedules convey the information required to be disclosed and can be treated as indicative.
10. The overriding requirement is that the disclosure statement must not be false or misleading.

Publication of Disclosure Statements

11. **Publication period for the full year.** The disclosure statements in respect of a bank's end of year must be published not later than three months after the bank's balance date. A disclosure statement is published when it is published on the registered bank's Internet site for New Zealand.
12. **Publication period for the half year and off quarters.** In general, the disclosure statements in respect of a bank's half year and off quarters must be published not later than two months after the bank's half year or off quarter reporting date. However, if the Reserve Bank is satisfied that a bank has reasonable grounds for not being able to comply with the two month deadline for its half year disclosure statement, the deadline is extended to three months. This might for instance be the case if a registered bank elects to obtain a full audit rather than a limited scope review of the financial information contained in the half year disclosure statement. The deadline for an off quarter disclosure statement is always two months, regardless of whether a bank opts for an external audit or review of the financial information it contains.

13. **Disclosure statements must be sent to Reserve Bank upon publication.** A copy of the bank's disclosure statement (other than of an overseas financial statement) must be sent to the Prudential Supervision Department of the Reserve Bank on the day of publication, in the form or format specified by the Reserve Bank. The required format is a printed copy of the disclosure statement, personally signed by those persons signing the disclosure statement in terms of section 82 of the Reserve Bank of New Zealand Act 1989 ("the Reserve Bank Act").

Availability of Disclosure Statements

14. The bank must make each disclosure statement readily accessible on its internet website, and the Orders specify that there must be a link on the home page of the website labelled "disclosure statements" that gives access to the bank's disclosure statements. Each disclosure statement must remain available on the website for at least five years after its original publication deadline.
15. The Orders set out requirements that apply when a person makes a request to the registered bank for any copies of its disclosure requirements. The Reserve Bank expects that users of disclosure statements will commonly access them electronically, and the requirements on availability are intended to avoid the need for a bank to keep stocks of printed copies of disclosure statements on hand.
16. A registered bank may in all cases refer a person who requests copies of its disclosure statements to its website. If a person does request that the bank provides them with copies of disclosure statements other than by download from its website, whether on paper or in some other form, the bank has an additional two working days to respond. This is intended to give the bank adequate time to process the request and print off copies of the documents in question, or send them out by other means such as e-mail. A bank must provide a copy of any of its disclosure statements free of charge to any person requesting it.
17. If a person requests a copy of a registered bank's most recent disclosure statement, the bank must offer to provide that person a copy of its most recent full year disclosure statement and any subsequent half year or off quarter disclosure statement. The purpose of requiring these particular periods is to ensure that a person seeking the latest information on the bank will be given the most recent full year disclosure statement containing all the background information on the bank, together with any more recent disclosure statements to provide the most up-to-date published picture of the bank's financial situation.
18. The Orders distinguish between a request for the most recent disclosure statement made in person at any of the bank's premises, and a request made by other means or for older disclosure statements. In the first case the bank must offer to provide printed copies of the relevant disclosure statements, while in the second case the bank must offer to provide copies "by suitable means". A request might be received by a variety of means including, for example, phone, mail, and e-mail, and the means suitable to responding to the request may depend to some extent on how it has been received, as well as the means by which a response is requested.

Compliance Issues

19. **No power to exempt.** The Reserve Bank Act does not provide the Reserve Bank with a power to exempt banks from compliance with particular aspects of the disclosure requirements. Instead, clause 15 of the Order applicable to locally-incorporated banks, and clause 16 of the Order applicable to overseas-incorporated banks enable a bank to make alternative disclosures where system limitations or circumstances beyond its control prevent the bank from making the required disclosure. In invoking these clauses, the bank must state the fact that the required disclosures cannot be made, indicate the reason(s) and disclose information which is the closest available alternative to that required to be disclosed.
20. **Clauses 15 or 16 should not be used with excessive frequency.** The Reserve Bank would expect that these clauses (15 or 16 in the respective Orders) would be used relatively sparingly. These are designed to be used in exceptional circumstances and generally for relatively brief periods – essentially in circumstances where a bank’s accounting systems are unable to provide the required information and pending the implementation of changes to those accounting systems. The Reserve Bank would raise concerns with a bank if it considered that clause 15 or 16 in the respective Order was being invoked with excessive frequency or for long periods in respect of the same disclosure requirement. An exception to this is in the case of disclosures of historical information: in this respect it may be necessary for a bank to invoke clause 15 or 16 (as applicable) for a lengthy period, given the five year span of historical information required to be disclosed (by Schedule 2, clause 15 in the Order for locally-incorporated banks, and by Schedule 2, clause 17 in the Order for overseas-incorporated banks).

Comparative Information

21. **Comparative information required at full year.** The Orders provide for the disclosure of comparative information in respect of most of the disclosures required in the full year disclosure statement by the Schedules to the Orders. The required comparatives are for the same period one year earlier. (For example, if the current period is for the six months ending 31 March 2008, the comparative period is for the six months ending 31 March 2007.) In line with the requirements of Generally Accepted Accounting Practice as they apply to financial statement information, the Orders require registered banks to restate prior period comparative information so that it corresponds with information presented for the current period, and to disclose the nature of, and the reason for, any restatements of prior period amounts. For reporting periods other than the full year, the Orders only require comparative information to be disclosed in respect of a very few items: it is not required except where the Orders explicitly state that it is, or unless it needs to be provided to satisfy applicable financial reporting standards.
22. **Flexibility where comparatives are not available.** It is recognised that, in some cases, registered banks may have difficulty extracting comparative information (for example, newly registered banks for the first 12 months under the disclosure regime). In recognition of this possibility, the Orders do not require the disclosure of comparative information where that information is not readily obtainable by the bank, except that the Orders deem comparative information to be available 12 months after

the date on which the particular information was first required by the Orders to be published.

Materiality

23. **Supplementary information must be published whether or not it is material.** The Orders require banks to publish supplementary prudential information regardless of its materiality. However, where applicable, banks may round quantitative information in line with normal rounding conventions.

Disclosure of Guarantees

24. The Orders require the disclosure of the nature and amount of the following guarantee arrangements in disclosure statements:
- guarantees of any material obligations of the registered bank; and
 - material cross-guaranteeing contracts involving the registered bank.

These guarantee arrangements are required to be disclosed regardless of whether the guarantor is a member of the banking group or lies outside the group.

25. A bank's full year disclosure statement must give detailed information on any guarantee arrangements. Disclosure statements for the half year and off quarters only have to provide summary information on guarantees, but must state that further information about them is available in the bank's most recent full year disclosure statement, and must give information on how to obtain that disclosure statement.

Credit Rating Disclosure

26. **Disclosure of credit rating steps.** In disclosing in the full year disclosure statement the descriptions or explanations of the steps in a rating agency's rating scales, banks should disclose all rating steps in the scale applicable (i.e. from the highest to the lowest rating step in all bands), regardless of what a bank's particular rating is. The rating step descriptions should follow as closely as possible the descriptions given by the rating agency in question.
27. **Alternative credit rating disclosures.** Some banks may have alternative credit ratings as well as the required ratings applicable to their senior unsecured liabilities payable in New Zealand dollars in New Zealand required pursuant to section 80 of the Reserve Bank Act. If such other ratings exist, a bank may disclose them in the disclosure statement.
28. **Disclosure of credit ratings and qualifications to ratings.** A bank will always need to disclose the general rating category and any associated modifier that applies to its credit rating. A bank's disclosure should use the standard systems of symbols and shorthand expression used by the rating agencies to express their rating opinions, for example, AA- or Aa3.

29. Any rating agency qualifiers, rating outlooks, watches or other qualifications that apply to a bank's credit rating should also be disclosed as a matter of course. Here also a bank's disclosure may use the short-hand expressions of these qualifications commonly used by rating agencies. However, where symbols may not be widely understood or self-explanatory, the bank should include appropriate explanations. For example, an outlook expressed as "positive", "negative" or "stable" would be considered self-explanatory but the symbols "POS", "NEG", or "STA" would require a brief explanation.

Exposure Concentration Disclosure

30. The Orders make it clear that, for the purposes of disclosing exposure concentration, banks may disclose either limits or actual exposures, but must disclose which of the two bases for measurement are being used. Where a bank's actual exposure to a counterparty materially exceeds the limit applicable to that counterparty over the accounting period in question, the Orders require disclosure on the basis of the actual exposure.

Additional Disclosure Statement for an Overseas Bank's Financial Statements

31. All banks operating in New Zealand as branches of overseas banks are required to disclose the most recent publicly available financial statements of the overseas bank and overseas banking group of which the branch is part. The bank must make these financial statements available on their internet site for New Zealand by the end of the first working day following the day on which they enter the public domain in the bank's country of domicile.
32. Because this requirement is imposed by deeming the overseas financial statements to be a disclosure statement under section 81 of the Reserve Bank Act, the requirement in section 82 also applies, namely that disclosure statements must be signed by the New Zealand chief executive officer or their agent. To satisfy this requirement, the branch must keep a record, signed by the person authorised to sign disclosure statements and dated within two days of the publication date, that authorises the New Zealand publication of the overseas financial statements and confirms that they are the most recent publicly available financial statements of the overseas bank.
33. As with other disclosure statements, the bank must send a copy of the disclosure statement of overseas financial statements to the Reserve Bank on the day that it is published, in the form or format specified by the Reserve Bank. To meet this requirement, it is sufficient for the bank to notify the Reserve Bank's Prudential Supervision Department on each occasion that the bank's overseas financial statements are first published on its internet site for New Zealand.
34. This disclosure requirement does not require the registered bank to translate financial information on the overseas bank into New Zealand dollars – the disclosures need only be in the form which is publicly available in the overseas bank's country of incorporation. However, the Orders do require banks to disclose the currency used where financial statements, or information drawn from financial statements, are disclosed in a currency other than New Zealand dollars. The bank must respond to requests for copies of the overseas financial statements in the same way as for other disclosure statements for the branch. Also, the bank must state in its other branch

disclosure statement how to access the most recently publicly available financial statements of the overseas bank and overseas banking group.

Director and Chief Executive Responsibility for Signing Disclosure Statements

35. **Disclosure statement must be signed by every director.** Section 82 of the Reserve Bank Act requires a registered bank’s disclosure statement to be signed by every director of the registered bank (except that a director can authorise someone to sign on his or her behalf).
36. **New Zealand chief executive officer of an overseas incorporated bank must also sign.** Disclosure statements for an overseas incorporated bank must be signed by the bank’s New Zealand chief executive officer (except that the New Zealand chief executive officer can authorise someone to sign on his or her behalf) as well as by the bank’s directors.
37. **Directors and New Zealand chief executive officers can authorise someone else to sign.** Section 82 of the Reserve Bank Act provides for a director or New Zealand chief executive officer (where applicable) of a registered bank to authorise (in writing) a person to sign the disclosure statement on his or her behalf. Directors and (where applicable) the New Zealand chief executive officer may authorise the same person or may each authorise a different person, as they see fit. The authorisation need not be made every quarter; once is sufficient. In authorising someone to sign the disclosure statement on his or her behalf, however, the director or New Zealand chief executive officer is not relieved from liability under the Act; they can “delegate” the signing of the disclosure statements, but cannot delegate their liability and responsibilities.
38. **“Director” means the person holding office as director.** Section 82 of the Reserve Bank Act makes it clear that the directors with responsibility for signing the disclosure statements (and therefore the directors who face potential liability under the Act) are the persons who hold office as directors – i.e. those actually appointed to the board of directors of the registered bank.
39. **Liability for non-compliance.** Sections 89, 89A, 89B, 89C and 90 of the Reserve Bank Act provide for criminal and civil sanctions against a registered bank, the New Zealand chief executive officer (for banks incorporated overseas) and the directors where there is non-compliance with disclosure requirements. If non-compliance occurs directors and, in the case of an overseas incorporated bank, the New Zealand chief executive officer, may face a term of imprisonment of up to 18 months or a fine of up to \$200,000 while the registered bank may be subject to a fine not exceeding \$2,000,000. Section 90 provides for the directors of the bank, the New Zealand chief executive officer (if the bank is incorporated overseas) and the bank itself to be liable for losses sustained by reason of subscribing to debt securities issued by a bank in reliance on false or misleading information contained in a disclosure statement.
40. The offence and penalty provisions of the Reserve Bank Act are very similar to those provided for in the Securities Act 1978 (“the Securities Act”). Therefore, the treatment of bank directors is similar to the treatment of directors of any issuer of securities to the public under the Securities Act.

41. **Defences to the statutory offences.** Sections 89A and 91 of the Reserve Bank Act provide defences to the offence provisions contained in sections 89A and 90 respectively. In essence, these defences are as follows:
- It is a defence to a prosecution under section 89A if a director of a registered bank or the New Zealand chief executive officer of an overseas incorporated bank proves that he or she had reasonable grounds to believe and did believe, up to the publication of the disclosure statement, that the information contained in the disclosure statement was true.
 - A director or New Zealand chief executive officer (where applicable) is not liable under section 90 (for losses sustained by reason of subscribing for a debt security issued by a registered bank in reliance on false or misleading information) if the director proves that:
 - o the disclosure statement was published without his or her consent, and that on becoming aware of the publication of the disclosure statement, he or she gave notice to the Reserve Bank and gave public notice that the disclosure statement was published without consent; or
 - o the director or New Zealand chief executive officer (where applicable) became aware of the false or misleading information after publication of the disclosure statement, and withdrew his or her consent to the disclosure statement, and gave notice to the Reserve Bank and gave public notice of the withdrawal of that consent; or
 - o the director or New Zealand chief executive officer had reasonable grounds to believe and did believe, up to the time of subscription for securities issued by the registered bank, that the disclosure statement was true.
42. These defences are similar to those contained in the Securities Act.

Director and Chief Executive Attestations

43. **Flexibility to add explanatory statements to attestations.** Bank directors and, where applicable, New Zealand chief executive officers are not permitted to qualify their attestations. However, there is nothing to prevent additional explanatory statements relating to the matters covered in attestations. For example, inclusion of additional information about internal controls, such as a statement that no system of internal controls can facilitate the perfect management of banking risks, provided that neither the meaning nor the wording of the attestations is changed from that contained in the Orders.
44. **Directors' and the New Zealand chief executive officer's signatures in the disclosure statements.** The directors' and, if applicable, the New Zealand chief executive officer's signatures need not appear in every published copy of the disclosure statement, provided that the directors' and, if applicable, New Zealand chief executive officer's names do appear, together with a clear statement indicating that the named persons have signed the disclosure statement.

Reserve Bank Roles in Relation to Disclosure Statements

45. **Reserve Bank does not approve draft disclosure statements, but may provide assistance in interpreting the disclosure requirements.** The Reserve Bank does not have the power to approve draft disclosure statements prior to their publication. Banks must rely primarily on their own judgement and that of their auditors, legal counsel or other advisers in preparing disclosure statements. Nonetheless, the Reserve Bank recognises that banks may wish to seek clarification from it in respect of some aspects of the disclosure requirements as they prepare their disclosure statements. Accordingly, where appropriate, the Reserve Bank is prepared to respond to questions put to it in order to assist banks to comply with the provisions of the Orders. However, it is important to note that the Reserve Bank's view on how the Orders should be interpreted is not legally binding and is not a substitute for banks seeking their own professional advice on this matter.
46. **Reserve Bank's roles in relation to disclosure statements.** The principal roles of the Reserve Bank in relation to the disclosure regime are as follows:
- The Reserve Bank reviews banks' published disclosure statements to monitor banks' compliance with disclosure requirements. Where the Reserve Bank has concerns that a bank may not be complying with the requirements, it will raise those concerns with the bank in question. In cases where the Reserve Bank is satisfied that a bank's disclosure statement is false or misleading, or a disclosure requirement has not been complied with, the Reserve Bank may use its power under section 83 of the Reserve Bank Act to require a bank to issue a correction to its disclosure statement or issue a new disclosure statement.
 - The Reserve Bank reviews banks' disclosure statements to monitor each bank's compliance with its conditions of registration. Where the Reserve Bank has reason to doubt that a condition is being complied with, it will raise that concern with the bank. If the breach of condition is confirmed, the Reserve Bank would require the bank to take corrective action so that the relevant condition of registration is complied with.
 - The Reserve Bank uses a bank's disclosure statements as one of the principal sources of information for monitoring the bank's financial condition.
 - The Reserve Bank keeps the Orders under review and prepares recommendations for the Government where changes to the disclosure requirements appear to be necessary. In accordance with the Reserve Bank's obligations under the Act, the Reserve Bank consults banks and other interested parties and has careful regard to their views before recommending changes to the Orders.