



## **BS11: OUTSOURCING POLICY**

### **Purpose of document**

This document sets out the Reserve Bank's policy for outsourcing by banks.

Prudential Supervision Department  
Document BS11

**Document version history**

<b>January 2006</b>	First issue date
<b>September 2017</b>	Revised

**Legal powers**

Section 74 of the Reserve Bank of New Zealand Act 1989 (the Act) permits the Reserve Bank of New Zealand (the Reserve Bank) to impose conditions of registration on any bank relating to, among other things, the matters referred to in sections 78(1)(e), (1)(fa) and (1)(fb) of the Act.

*All of the material set out in this document that imposes requirements on banks forms part of the requirements referred to in the condition, except material that is identified as guidance by being included in a shaded box like this.*

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## Part A: Introduction

### A1 Overview of outsourcing policy

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#### A1.1 Purpose and structure of document

- (1) This document sets out the Reserve Bank's policy for outsourcing by banks.
- (2) This Part—
  - (a) sets out the objectives of the policy; and
  - (b) describes the banks to which the policy will apply; and
  - (c) specifies the underlying legal powers; and
  - (d) specifies how the Reserve Bank will treat non-compliance; and
  - (e) defines words and phrases that are used within the policy.
- (3) Part B sets out—
  - (a) the outcomes of the policy; and
  - (b) the risk mitigation requirements banks are required to have; and
  - (c) the process for non-objection; and
  - (d) the requirements for a compendium; and
  - (e) the requirements for a separation plan.
- (4) Part C sets out—
  - (a) the list of Pre-approved Services and Functions; and
  - (b) the white list.
- (5) Part D sets out—
  - (a) the transition path requirements; and
  - (b) the external review requirements.
- (6) Appendix one sets out the conditions of registration.

#### A1.2 Objectives of outsourcing policy

The objectives of this policy are to ensure that an **outsourcing arrangement** entered into by a **bank** does not compromise that **bank's** ability to—

- (a) be effectively—
  - (i) administered under statutory management; and
  - (ii) operated for the purposes of continuing to provide and circulate liquidity to the financial system and the wider economy; and
- (b) facilitate the carrying on of **basic banking services** by any new owner of all or part of the **bank**; and
- (c) address the impact that the failure of a service or **function** provider may have on the **bank's** ability to carry on all or part of the business of the **bank**.

### A1.3 Application of outsourcing policy

- (1) A **large bank** will be required, under its conditions of registration, to comply with this policy.
- (2) The following **banks** may also be required, under their conditions of registration, to comply with all or part of this policy:
  - (a) a **bank** that becomes a **large bank**;
  - (b) a **bank** that was a **large bank**, but which no longer falls within the definition of a **large bank**.

### A1.4 Legal powers

- (1) Under Part 5 of the **Act** the Reserve Bank registers **banks**, is required to prudentially supervise them and is provided with the powers to do so.
- (2) Section 68 of the **Act** requires the powers under Part 5 of the **Act** to 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**.
- (3) Section 68A of the **Act** requires that the Reserve Bank, when exercising its Part 5 powers, must–
  - (a) support Australian authorities in pursuit of Australian financial stability; and
  - (b) where reasonably practicable, avoid actions that are likely to have a detrimental effect on financial stability in Australia.
- (4) Section 74 of the **Act** permits the Reserve Bank to impose conditions of registration on **banks** which, among other things, may include conditions that relate to the matters referred to in section 78(1)(e), (1)(f), and (1)(fb) of the **Act**, namely–
  - (a) the separation of the business or proposed business from other business and from other interest of any person owning or controlling the applicant or registered **bank** (section 78(1)(e)); and
  - (b) the internal controls and accounting systems or proposed internal controls and accounting systems (section 78(1)(f)); and
  - (c) the 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** (section 78(1)(fb)).
- (5) The standard conditions of registration for **banks** subject to the outsourcing policy are set out in Appendix one.

### A1.5 Reserve Bank action following non-compliance

- (1) If any **outsourcing arrangement** entered into by a **bank** fails to comply with the requirements of **BS11**, the Reserve Bank will require the **bank** to amend the terms of the relevant **outsourcing arrangement** to achieve compliance.
- (2) However, if the **bank** fails to achieve compliance, the Reserve Bank may take enforcement action against the **bank** to ensure compliance.

## A2 Interpretation

### A2.1 Meaning of words and phrases

For the purposes of interpreting the words and phrases used in this policy, the following words and phrases (which appear in bold when used in this policy) have the corresponding meanings:

**Act** means the Reserve Bank of New Zealand Act 1989

**annual** means a period of 12 months, commencing on the day after the day on which the relevant obligation was last performed, and **annually** has a corresponding meaning

**bank** means a **person** registered under Part 5 of the **Act**

**basic banking services** means the key retail and business services–

- (a) that **bank** customers typically rely on for transactions and economic life, including the following services:
- (i) New Zealand dollar transactional or similar accounts used by individuals and businesses for their transactional needs, including Automatic Teller Machine (ATM) services, and the ability of customers to access their account through at least two other of the most commonly used channels; and
  - (ii) New Zealand dollar savings accounts and deposits accounts, including term deposit accounts, provided to customers as a store of value; and
  - (iii) New Zealand dollar credit services to customers, including credit cards, overdraft and revolving credit facilities, secured and unsecured lending, and home loan facilities, including pre-approvals; and
  - (iv) payment clearing and settlement services, including credit card merchant acquiring services and agency arrangements; and
  - (v) account activity reporting for the accounts, services, and products required in respect of **basic banking services** held by customers; and
- (b) that, if disrupted or suddenly discontinued, could be reasonably expected to–
- (i) have a material negative impact on a significant number of third parties that rely on such services; or
  - (ii) lead to contagion effects, including significant adverse effects on market confidence

*Guidance: The definition of **basic banking services** makes no distinction between customer types and so, for the purposes of this definition, there is no difference between consumer, small-to-medium business, or institutional customers.*

*Guidance: For all products offered to customers that are not basic banking services, a **bank** must be able to close out and manage the wind down of those products on a standalone basis. The level of back-up necessary to meet this requirement will be agreed with the Reserve Bank and may be less than the robust back-up capability outlined in Part B2. This will need to be covered off in a **bank's** separation plan. See Part B5.*

**banking group** means the group defined in the **bank's** conditions of registration

**becoming effective** means the time at which **outsourcing arrangement** becomes enforceable by both the **bank** and the **outsourcing arrangement provider**

**business continuity programme/disaster recovery capability (BCP/DR capability)** means a business continuity programme and disaster recovery capability that is–

- (a) provided for by the **outsourcing arrangement provider**; and
- (b) appropriate and adequate for the purposes of ensuring the continuation of the relevant **outsourcing arrangement**

**BS11** means this outsourcing policy

**business day** means a day of the week other than–

- (a) a Saturday, a Sunday, the Sovereign's birthday, Labour Day, Good Friday, Easter Monday, Waitangi Day, Anzac Day, Christmas Day, Boxing Day, New Year's Day, and 2 January; and
- (b) a day that is specified in any of the following paragraphs as not being a business day:
  - (i) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday is not a business day.
  - (ii) if Christmas Day or New Year's Day falls on a Friday, the following Monday is not a business day.
  - (iii) if Christmas Day or New Year's Day falls on a Saturday or a Sunday, the following Monday and Tuesday are not business days.

**commencement date** means the date on which a **bank's** conditions of registration for the revision of **BS11** issued in September 2017 first take effect

**compendium** means a formal and centralised record of all **outsourcing arrangements** of a **bank** that complies with the requirements of Part B4

**day of failure** means the day on which either–

- (a) a **bank**–
  - (i) becomes subject to statutory management; or
  - (ii) is no longer a subsidiary of its **parent**; or
  - (iii) is given a direction under the **Act** in relation to an outcome under section B1.1(3); or
- (b) a **disruption of an outsourcing arrangement** of a **bank** occurs

**disruption of an outsourcing arrangement** means a situation where, because of the interruption, suspension, or unavailability of an **outsourcing arrangement**, the **bank** is, or will be, unable to meet the outcomes of section B1.1(3)

**existing outsourcing arrangement** means an **outsourcing arrangement** that was entered into by a **bank** before the **commencement date**, and includes an **in-progress arrangement**

**foreign-owned banking group:**

- (a) means an entity that –
  - (i) is incorporated, formed, or established in a jurisdiction other than New Zealand, regardless of whether it–
    - (A) has a primary place of business in New Zealand; or
    - (B) carries on business in New Zealand; and
  - (ii) carries on banking business with authorisation, licence, or similar

permission from a banking supervisory authority having jurisdiction in that entity's country of incorporation; and

- (b) all subsidiaries of that entity

**function** includes a system

**independent third party** means a **third party** that is not a **subsidiary**, a **parent**, or a **related party**

**in-progress arrangement** means an **outsourcing arrangement**,—

- (a) in respect of which, at the **commencement date**,—
- (i) the **bank's** internal supplier risk acceptance and approval processes have commenced; and
  - (ii) Reserve Bank non-objection in relation to the proposed **outsourcing arrangement** has been sought by the **bank** (if applicable); and
  - (iii) a draft contract or statement of work is already under negotiation with the **outsourcing arrangement provider** or its external counsel; and
- (b) that will be finalised no later than 3 months after the **commencement date**

**large bank** means a **bank**—

- (a) that is incorporated as a company in New Zealand; and
- (b) whose **net liabilities**, as specified in the **bank's** latest disclosure statement, exceed \$10 billion

**legal ability to control and execute a service or function** means a **bank's** ability to invoke statutory, contractual, or other rights, to ensure that the relevant service or **function** continues to be provided

**legal and practical control** means both **legal ability to control and execute a service or function** and **practical ability to control and execute a service or function**

**list of pre-approved services and functions** means the list described in Part C1

**net liabilities**—

- (a) means the total liabilities of the **banking group**; but
- (b) does not include any amounts that the **banking group** owes to **related parties**

**other related party** means a **related party** that is not a **subsidiary**

**outsourcing**—

- (a) means a **bank's** use, now and in the future, of a **third party** (either a **related party** within the **banking group** or **third party** that is external to the **banking group**) to perform services or **functions** on a regular or continuing basis that could be undertaken by the **bank**; but
- (b) does not include a **bank's** use of any services or **functions** on the **white list**

**outsourcing arrangement** means a contractual arrangement for **outsourcing**

**outsourcing arrangement provider** means the service or **function** provider under an **outsourcing arrangement**

**parallel rights** means—

- (a) step-in rights that allow the **bank** to enforce its rights under the **outsourcing arrangement** in question—
  - (i) if the **bank** were to no longer be a subsidiary of its **parent**; or
  - (ii) on the failure of the **other related party**; or

- (b) a separate contract that—
- (i) provides for the continuation of the **outsourcing arrangement** in question; and
  - (ii) comes into force—
    - (A) if the **bank** were to no longer be a subsidiary of its **parent**; or
    - (B) on the failure of the **other related party**

**parent** means a **person** that is a holding company of the **bank**

**person** includes a corporation sole, a body corporate, and an unincorporated body

**practical ability to control and execute a service or function** means a **bank's** ability to secure continued provision of the **outsourcing arrangement** within the timeframes set out in this document

*Guidance: Practical ability to control and execute a service or function depends heavily on the availability and responsiveness of personnel with the technical and business knowledge needed to control and execute the function, as well as physical access to and control of the required systems and data. In meeting the timeframes, the bank must ensure that it takes account of any delays that it may face in enforcing its legal rights.*

**prescribed contractual terms** means the contractual terms specified in section B2.9

**related party** means—

- (a) a **person** that directly or indirectly controls the management of the **bank**; or
- (b) a **person** that has direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by the **bank**; or
- (c) a **person** that is directly or indirectly controlled by that **bank**; or
- (d) a **person** in which that **bank** has a direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by that **person**; or
- (e) a **person** (person A) to whom both the **person** in question (person B) and the **bank** are **related parties**; or
- (f) any other **person**, where a **parent** of the **bank**—
  - (i) has a direct or indirect interest in 20% of the voting securities of that **person**; or
  - (ii) controls the management of that **person**:

**subsidiary** for the purposes of **BS11** means a subsidiary—

- (a) within the meaning given by section 2(1) of the **Act**; and
- (b) is incorporated in New Zealand.

**thereafter** means an indefinite period

**third party** means a **person** that is not the **bank**

**time-critical obligation**—

- (a) means clearing, settlement, and any other obligation of a **bank** that is relevant to it meeting the requirements of **BS11**; and
- (b) includes an obligation of a **bank** to ensure that payments are made to critical service or **function** providers

*Guidance: Critical service providers will be agreed with the Reserve Bank on a bank by bank basis.*

**white list** means the list described in Part C2

## Part B: General requirements on banks

### B1 Outcomes

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#### B1.1 Obligation of individual bank to achieve outcomes

- (1) A **bank** meets the objectives of this policy if the **bank** is able to achieve all of the outcomes described in subsection (3).
- (2) However, subsection (1) is subject to section B1.2.
- (3) The outcomes are that the **bank** must–
  - (a) continue to meet its daily clearing, settlement, and other **time-critical obligations**, both before the start of the first **business day** after the **day of failure** and **thereafter**; and
  - (b) monitor and manage its financial positions, including credit, liquidity, and market risk positions, both on the start of the first **business day** after the **day of failure** and **thereafter**; and
  - (c) make available the systems and financial data necessary for the statutory manager and Reserve Bank to have available a range of options for managing the failed **bank**, both before the start of the **business day** after the **day of failure** and **thereafter**; and
  - (d) provide **basic banking services** to existing customers including, but not limited to, liquidity (both access to deposits and to credit lines as defined in **basic banking services**) and account activity reporting, both on the start of the first **business day** after the **day of failure** and **thereafter**.

#### B1.2 Obligation of bank that is part of a foreign-owned banking group to achieve outcomes

A **bank** that is part of a **foreign-owned banking group** meets the objectives of this policy if, in the event of separation from its **parent**, it is able to achieve the outcomes described in section B1.1(3) as a stand-alone entity.

### B2 Risk mitigation

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#### B2.1 Outsourcing arrangements to include risk mitigation provisions

- (1) An **outsourcing arrangement** must have the relevant risk mitigation requirements in place at all times, as set out in this subpart, according to the type of **outsourcing arrangement**.
- (2) The types of **outsourcing arrangement** are as follows:
  - (a) an **outsourcing arrangement** with an **independent third party** (see section B2.2):
  - (b) an **outsourcing arrangement** with a **subsidiary** (see section B2.3):
  - (c) an **outsourcing arrangement** made through a **subsidiary** (see section B2.4);
  - (d) an **outsourcing arrangement** with an **other related party** (see section B2.5);
  - (e) an **outsourcing arrangement** with an **independent third party** that is made through an **other related party** (see section B2.6);
  - (f) an **outsourcing arrangement** that is not specifically dealt with in any of sections B2.2 to B2.6 (see section B2.7).
- (3) If the **outsourcing arrangement** is with an **other related party**, the **bank** must also have robust back-up capability in place or, subject to the **bank** having obtained non-objection from the Reserve Bank, have made alternative arrangements (see section B2.8).

- (4) If the **outsourcing arrangement** is made with an **independent third party** through an other **related party**, the **bank** may seek the Reserve Bank's agreement, by way of a notice of non-objection, to substitute the **parallel rights** component of the **prescribed contractual terms** (see section B2.9) with robust back-up capability or alternative arrangements (see sections B2.6(3) B2.8).

## **B2.2 Outsourcing arrangement with independent third party**

- (1) This section sets out the risk mitigation requirements that a **bank** must have in place in relation to an **outsourcing arrangement** with an **independent third party**.
- (2) To meet the risk mitigation requirements for a direct **outsourcing arrangement** with an **independent third party**, the **bank** must ensure that—
- (a) the **BCP/DR capability** of the **independent third party** is evidenced as being in place; and
  - (b) the **prescribed contractual terms** are included in the **outsourcing arrangement**; and
  - (c) the **outsourcing arrangement** is entered onto the **bank's compendium**.

*Guidance: Parallel rights are not required for an outsourcing arrangement with an independent third party.*

## **B2.3 Outsourcing arrangement with subsidiary**

- (1) This section sets out the risk mitigation requirements that a **bank** must have in place in relation to an **outsourcing arrangement** with a **subsidiary**.
- (2) To meet the risk mitigation requirements for arrangements with a **subsidiary**, a **bank** must ensure that—
- (a) the **BCP/DR capability** of the **subsidiary** is evidenced as being in place; and
  - (b) the **prescribed contractual terms**, other than the **parallel rights**, are included in the **outsourcing arrangement**; and
  - (c) the **outsourcing arrangement** is entered onto the **bank's compendium**.

## **B2.4 Outsourcing arrangement made through subsidiary**

- (1) This section sets out the risk mitigation requirements that a **bank** must have in place in relation to an **outsourcing arrangement** with a **subsidiary** that outsources the relevant service or **function** to an **independent third party**.
- (2) To meet the risk mitigation requirements for arrangements with a **subsidiary**, a **bank** must ensure that—
- (a) the **BCP/DR capability** of the **independent third party** is evidenced as being in place; and
  - (b) the **prescribed contractual terms**, other than the **parallel rights**, are included in the **outsourcing arrangement**; and
  - (c) the **outsourcing arrangement** is entered onto the **bank's compendium**.

## **B2.5 Outsourcing arrangement with other related party**

- (1) This section sets out the risk mitigation requirements that a **bank** must have in place in relation to an **outsourcing arrangement** with an **other related party**.

- (2) To meet the risk mitigation requirements for an **outsourcing arrangement** with an **other related party**, the **bank** must ensure that–
- (a) the **BCP/DR capability** of the **other related party** is evidenced as being in place; and
  - (b) the **prescribed contractual terms** are included in the **outsourcing arrangement**; and
  - (c) it has in place either–
    - (i) a robust back-up capability (see section B2.8(1) – (6)); or
    - (ii) alternative arrangements (see section B2.8(7) – (10)); and
  - (d) the **outsourcing arrangement** is entered onto the **bank's compendium**.
- (3) However, despite subsection (2)(c), a **bank** is not required to have in place a robust back-up capability or to have made alternative arrangements if–
- (a) the **bank** is not part of a **foreign-owned banking group**; and
  - (b) the **outsourcing arrangement** is with a **related party**; and
  - (c) that **related party** is incorporated in New Zealand.

#### **B2.6 Outsourcing arrangement made through parent or other related party**

- (1) This section sets out the risk mitigation requirements that a **bank** must have in place in relation to an **outsourcing arrangement** with the **parent** or an **other related party** that outsources the relevant service or **function** to an **independent third party**.
- (2) To meet the risk mitigation requirements for an **outsourcing arrangement** made with an **independent third party** through a **parent** or an **other related party**, the **bank** must ensure that–
- (a) the **BCP/DR capability** of the **independent third party** is evidenced as being in place; and
  - (b) the **prescribed contractual terms** are included in the **outsourcing arrangement**; and
  - (c) the **outsourcing arrangement** is entered onto the **bank's compendium**.
- (3) However, despite subsection (2)(b), a **bank** is not required to have the **parallel rights** component of the **prescribed contractual terms** in place if either–
- (a) the **bank** has a notice of non-objection from the Reserve Bank to substitute those **parallel rights** with either–
    - (i) a robust back-up (see section B2.8(1) to (6)); or
    - (ii) alternative arrangements (see section B2.8(7) to (10)).
  - (b) the **bank** is not part of a **foreign-owned banking group** and–
    - (i) the **outsourcing arrangement** is with a **related party**; and
    - (ii) that **related party** is incorporated in New Zealand.

#### **B2.7 Other outsourcing arrangement**

- (1) This section applies to any **outsourcing arrangement** not provided for in any of sections B2.2 to B2.6.
- (2) If a **bank** proposes to enter into an **outsourcing arrangement** not provided for in any of sections B2.2 to B2.6, it may apply to the Reserve Bank for a notice of non-objection to that arrangement.

- (3) An application for non-objection must be made to the Reserve Bank in the form available on the Reserve Bank's internet site.
- (4) To avoid doubt, a **bank** may not enter into an **outsourcing arrangement** not provided for in any of sections B2.2 to B2.6 unless it has first obtained a notice of non-objection from the Reserve Bank.

**B2.8 Outsourcing arrangement with other related party: robust back-up capability and alternative arrangements**

- (1) This section sets out the robust back-up requirements that a **bank** must have in place if the **bank** has an **outsourcing arrangement** with an **other related party**, and the requirements applying to a **bank** that seeks to make alternative arrangements to the robust back-up requirements.
- (2) The requirements in subsections (3) to (6) do not apply if the **bank** has a notice of non-objection to enter into alternative arrangements (see subsections (7) to (10)).
- (3) A **bank** must obtain non-objection from the Reserve Bank before the **bank** enters into a robust back-up arrangement.
- (4) An application for non-objection must be made to the Reserve Bank in the form available on the Reserve Bank's internet site.
- (5) To meet the robust back-up requirements, the **bank** must ensure that—
  - (a) there is no possibility of permanently losing transactions; and
  - (b) all disrupted transactions must be processed within 48 hours of the failure or disruption of the **outsourcing arrangement**; and
  - (c) the switch over from the outsourced arrangement to its robust back-up arrangement must be delivered—
    - (i) on the **day of failure** for **functions** related to outcomes described in section B1.1(3)(a) and (c) (the robust back-up arrangement must be running no later than 6 hours after the time at which the **bank** is required to switch over); and
    - (ii) before 9:00 am on the **business day** after the **day of failure** for **functions** related to outcomes described in section B1.1(3)(b) and (d); and
  - (d) the back-up arrangement must be sustainable; and

*Guidance: The back-up arrangement will be considered sustainable if it could be equally substituted for the **outsourcing arrangement** on an on-going and fully automated basis, to deliver the outsourced service or **function** with minimal impact and disruptions to both the bank's customers and the bank's own business operation.*

- (e) testing of end-to-end functionalities for the back-up arrangement—
  - (i) is conducted—
    - (A) on an **annual** basis; and
    - (B) in an environment that replicates the functional, operational, and infrastructure capabilities of the required back-up service or **function**; and
  - (ii) enables the **bank** to provide reasonable assurance that the back-up arrangement will be available, and work, as intended; and

*Guidance: This testing must be done to ensure that the back-up arrangement will be available and work as intended.*

- (f) changes made to the live environment must also be made in the back-up environment; and
- (g) external review of the back-up arrangement must be conducted, to ensure the arrangement remains robust,—
  - (i) **annually**, during the five-year transitional period; and
  - (ii) at least every three years after that period has expired; and
- (h) it has—
  - (i) direct ownership of the back-up system; or
  - (ii) **legal and practical control** over all aspects of the back-up system.

*Guidance: This means that the backup arrangement cannot be provided by a **parent** of the bank or a **related party** of the **parent**. However, a **bank** can apply to the Reserve Bank to have its back-up arrangement provided by a **subsidiary**. This requirement does not mean that the system must be located in New Zealand, but requires that the bank should have the **legal and practical control** over back-up system: that is, that they own the system (or have a direct relationship with the **third party** provider for that system) and the data that is required to use it.*

- (6) The timeframes relating to the back-up capability requirement do not affect the timeframes for a **bank's** conditions of registration relating to BS17: Open Bank Resolution Pre-positioning Requirements Policy (or other applicable requirements under other conditions of registration) and a **bank** must ensure that it can meet the requirements of these as well as the **BS11** requirements.

*Guidance: The back-up capability timeframes are designed to ensure that a **bank** will be able to reopen at 9am the day after being placed into statutory management. It is important for **banks** to recognise that these timeframes do not affect a **bank's** other obligations under its conditions of registration.*

- (7) Despite subsections (3) – (6) if a **bank** has an **outsourcing arrangement** with an **other related party**, the **bank** may apply to the Reserve Bank for a non-objection to make alternative arrangements to the robust back-up capability requirements.
- (8) A **bank** must obtain non-objection from the Reserve Bank before the **bank** enters into an alternative arrangement.
- (9) An application for non-objection must be made to the Reserve Bank in the form available on the Reserve Bank's internet site.
- (10) In considering whether or not to grant non-objection to a **bank** to make alternative arrangements, the Reserve Bank's considerations will include, but will not be limited by, the following matters—
  - (a) whether the **bank** has **legal and practical control** over the **outsourcing arrangement** provider and the **outsourcing arrangement**; and
  - (b) whether the **parent**, an **other related party**, or any overseas authorities may be able to frustrate the **outsourcing arrangement**, or control or direct the **outsourcing arrangement provider**; and
  - (c) the relationship between the **bank** and the **outsourcing arrangement provider**; and
  - (d) what **functions** or activities the **outsourcing arrangement provider** will be undertaking on behalf of the **bank**; and
  - (e) whether the **outsourcing arrangement provider** will also be providing services or **functions** to any **related parties**.

## B2.9 Prescribed contractual terms

(1) If a **bank** has entered into an **outsourcing arrangement**, the **bank** must ensure that the **outsourcing arrangement** contains the **prescribed contractual terms**.

(2) The **prescribed contractual terms** are as follows:

- (a) there must be a contractual provision that ensures continuing access, on arms-length commercial terms, to the relevant services and **functions** if the **bank** enters statutory management; and

*Guidance: For the purposes of this requirement, **arms-length commercial terms** includes a term that requires the bank to continue to pay for the service or **function** under the existing contract with the **third party**.*

- (b) there must be a contractual provision that gives the Reserve Bank the ability to access documentation, and other information, that relates to the **outsourcing arrangement**.

*Guidance: The Reserve Bank only expects that **third party** providers will be contractually required to provide access to documentation and information about a relevant **outsourcing arrangement**, when such documentation and information belongs to, or is accessible to, the **third party** itself.*

(3) If a **bank** has entered into an **outsourcing arrangement** that is made through a **parent** or an **other related party**, the **prescribed contractual terms** also include a term that enables the **bank** to ensure that it has **parallel rights** in relation to that **outsourcing arrangement**.

*Guidance: This requirement is designed to ensure that the bank has continuing access to the services or **functions** if the bank is separated from its **parent** or the wider **banking group**. Further contractual terms the Reserve Bank would expect, but does not require, to see included in a robust **outsourcing arrangement** include terms relating to matters such as-*

- (a) *the scope of the arrangement and the services and **functions** to be supplied:*
- (b) *the commencement and end dates:*
- (c) *escrow arrangements:*
- (d) *review provisions:*
- (e) *pricing and fee structure:*
- (f) *service and **function** levels and performance requirements:*
- (g) *the form in which the data is to be kept and clear provisions identifying ownership and control of data:*
- (h) *reporting requirements, including content and frequency of reporting:*
- (i) *audit and monitoring processes;*
- (j) *business continuity management around how the service or **function** provider will deal with a failure of the service or **function** it is providing:*
- (k) *confidentiality privacy and security of arrangements:*
- (l) *default arrangements and termination provisions:*
- (m) *dispute resolution arrangements:*
- (n) *liability and indemnity;*
- (o) *sub-contracting:*
- (p) *insurance.*

## B3 Non-objection from Reserve Bank

### B3.1 Non-objection required for certain outsourcing arrangements

- (1) A **bank** must obtain non-objection from the Reserve Bank before the **bank** enters into an **outsourcing arrangement**.
- (2) However, despite subsection (1), non-objection is not required if the proposed **outsourcing arrangement** is–
  - (a) an arrangement of the kind described in section B3.4; or
  - (b) on the **List of pre-approved services and functions**; or
  - (c) on the **White list**; or
  - (d) contracted, or proposed to be contracted, directly between the **bank** and an **independent third party**.

*Guidance: Where a **bank** proposes to **outsource** a service or **function** that is on the **List of Pre-Approved Services and Functions** or the **White list**, (the services and functions on those lists are not subject to the requirement for non-objection from the Reserve Bank), a **Bank** must otherwise comply with all other relevant provisions of **BS11**, and all other relevant conditions of registration, when entering into the **outsourcing arrangement**. For further information on these documents, see Part C.*

### B3.2 Application for non-objection

- (1) A **bank** must obtain non-objection from the Reserve Bank before the **bank** enters into an **outsourcing arrangement** that is not described in section B3.1(2).
- (2) An application for non-objection must be made to the Reserve Bank in the form available on the Reserve Bank's internet site.

*Guidance: The application will contain fairly high-level information on the proposed **outsourcing arrangement**. It is anticipated that, in combination with the extended **white list**, the Reserve Bank will be in a position to consider the majority of **outsourcing** applications under this application. It would only be for more complex arrangements that the Reserve Bank anticipates the need for a more comprehensive application.*

- (3) The application must demonstrate that, in assessing the options for **outsourcing** a service or **function**, the **bank** has considered, and responded appropriately to, all the matters outlined in the application form.

### B3.3 Consideration of application

- (1) On receiving an application for non-objection to an **outsourcing arrangement** from a **bank**, the Reserve Bank will do one of the following things:
  - (a) it may issue the **bank** with a notice of non-objection to the **outsourcing arrangement**; or
  - (b) it may require the **bank** to make modifications to the proposed **outsourcing arrangement** before entering into it; or
  - (c) it may request the **bank** to provide more information; or
  - (d) it may decline the application.

*Guidance: The Reserve Bank will endeavour to provide the outcome of the application to the bank within 20 working days.*

- (2) Subsections (3) to (5) set out further detail on how, having considered an application, the Reserve Bank will respond to an application if it does not issue the non-objection in accordance with subsection (1)(a).

- (3) If the Reserve Bank considers that modifications to the proposed **outsourcing arrangement** should be made, it may require the **bank** to make such modifications before the **bank** enters into the proposed **outsourcing arrangement**.

*Guidance: In this case, the Reserve Bank's non-objection may be issued subject to the bank making the required modifications, or the Reserve Bank may defer issuing its non-objection until such time as it is satisfied that the bank has made those modifications.*

- (4) If the Reserve Bank considers that more information is required, it may request that the **bank** provides further, specified, information and, in that case,—
- (a) the application will not be considered further until the **bank** provides the requested information; and
  - (b) on receipt of that information by the Reserve Bank, the application will be treated as a new request, and the process outlined in subsection (1) will be re-applied.
- (5) The Reserve Bank may decline the application if—
- (a) it considers that it is not possible for the proposed **outsourcing arrangement** to comply with **BS11**; or
  - (b) despite requests for the **bank** to make modifications or provide further information, the **bank** has failed, within a reasonable time, to do so to the satisfaction of the Reserve Bank;
  - (c) the Reserve Bank, for any other reason, reasonably considers that it would not be appropriate to issue a notice of non-objection.
- (6) To avoid doubt, regardless of the issue by the Reserve Bank of a notice of non-objection, it is the **bank's** responsibility to ensure the **outsourcing arrangement** in question is, and remains, compliant with **BS11**.

*Guidance: A notice of non-objection from the Reserve Bank to an **outsourcing arrangement** is made on the basis of information a bank provides to the Reserve Bank. A notice of non-objection does not constitute a safe-harbour. It is the **bank's** responsibility to ensure an **outsourcing arrangement** is compliant with the policy and continues to be so.*

#### **B3.4 Existing outsourcing arrangements and in-progress outsourcing arrangements**

- (1) A **bank** does not need to seek **Reserve Bank** non-objection in relation to an **outsourcing arrangement** that is an **existing outsourcing arrangement** or an **in-progress outsourcing arrangement**.
- (2) However, the **bank** must ensure that all **outsourcing arrangements**, including those described in subsection (1),—
- (a) are included in the **bank's** transition path; and

*Guidance: The transition path refers to the steps that a **bank** must follow to ensure that it achieves full compliance with **BS11** within the 5-year transition period. The relevant requirements are set out in Part D.*

- (b) comply with **BS11** no later than 5 years after the **commencement date**.

## B4 Compendium

### B4.1 Requirement for, and purpose of, compendium

- (1) The **bank** must have a **compendium**.
- (2) The purpose of the **compendium** is to enable the Reserve Bank and a statutory manager to understand what services and **functions** have been outsourced by a **bank**.
- (3) This information must be readily accessible as some **outsourcing arrangements** may relate to **time-critical obligations**.
- (4) This section is subject to section B4.5, which allows a **bank** 2 years from the **commencement date** to meet its obligations in relation to its **compendium**.

### B4.2 Content and form of compendium

- (1) A **compendium** must include the following information:
  - (a) the legal name, physical address, and address for service, of the entity providing the **outsourced arrangements**; and
  - (b) the total value of the **outsourcing arrangement**, including both the upfront costs and the on-going expenses; and
  - (c) the expiry date, and any renewal date, of the **outsourcing arrangement**; and
  - (d) the **outsourcing arrangements** in place for the termination of the **outsourcing arrangement** (see section B2.6); and
  - (e) an overview of the service or **function** that has been outsourced.
- (2) The **compendium** must be kept in electronic form, and in a format that ensures that it is accessible to the Reserve Bank when requested under section B4.4.

*Guidance: Both forms of the **compendium** should contain identical content. One of the reasons for requiring electronic format is to enable the **compendium** to be sent to the Reserve Bank in that format, if required under section B4.4.*

### B4.3 Bank must maintain, and annually review, compendium

- (1) The **bank** must ensure that the **compendium**–
  - (a) is a key accountability document, embedded in the **bank's** compliance system; and
  - (b) is kept up to date; and
  - (c) is updated within 20 working days of any new **outsourcing arrangement becoming effective**, to take account of that new **outsourcing arrangement**; and

*Guidance: In the case of a new **outsourcing arrangement**, the required information will be as required under section B4.2. Further, the other requirements in **BS11** relating to **outsourcing arrangement** will apply equally to the new arrangement.*

- (d) forms part of the oversight and governance reviews undertaken by the board and senior management of the **bank**.
- (2) In addition to requirements of subsection (1), the **bank** must ensure that–
  - (a) the **compendium** is reviewed regularly, and at least **annually**; and
  - (b) the review is conducted by one of the following, as appropriate:
    - (i) the **bank's** own internal audit function; or

- (ii) an external auditor of the **bank**; or
- (iii) the independent external reviewer (see Part D).

#### **B4.4 Bank must provide compendium to Reserve Bank**

The **bank** must provide the **compendium** to the Reserve Bank,—

- (a) on request; and
- (b) in the format requested (see section B4.2(2)).

*Guidance: The Reserve Bank will likely ask for a copy of a bank's **compendium** at least once a year as part of normal supervisory practice. Outside of this annual request the Reserve Bank will likely only ask for a copy of a bank's **compendium** in special circumstances.*

#### **B4.5 Transitional provision**

- (1) A **bank** may, but is not required to, have a **compendium** on the **commencement date**.
- (2) However, the **bank** must ensure that it has a **compendium** that meets the requirements of this Part within 2 years of the **commencement date**.
- (3) The **bank** must incorporate the requirement for a **compendium** into its transition path for compliance with the September 2017 revision of **BS11**.

## **B5 Separation plan**

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### **B5.1 Requirement for, and purpose of, separation plan**

- (1) Subject to subsections (2) and (3) a **bank** must have a separation plan.
- (2) The purpose of a separation plan is to enable the **bank** to provide for the steps it would take to ensure that **outsourcing arrangements** in relation to the **bank's** services and **functions** would continue to be provided on the **day of failure** and **thereafter**.

*Guidance: Specifically, the objective of the separation plan should be that the **bank** continues to meet the outcomes of **BS11**.*

- (3) The requirement for a separation plan does not apply if the **bank** is subject to **BS11**, but it is not a member of a **foreign-owned banking group**.
- (4) A **bank** is not required to have a separation plan until 6 months after the **commencement date**, at which time the plan must be in draft form: the **bank** must have a separation plan that is fully compliant with this policy within 5 years of the **commencement date**.

### **B5.2 Content and form of separation plan**

- (1) A separation plan must include the following information:
  - (a) a description of the processes the **bank** would undertake to operate services and **functions** in respect of **outsourcing arrangements** that were previously provided by, or through, an **other related party** in the event it is—
    - (i) subject to the appointment of a statutory manager; or
    - (ii) otherwise separated from the **foreign-owned banking group**; and

- (b) details of the following matters, from the day of being subject to statutory management or separated from its **foreign-owned banking group** and, if necessary, **thereafter**:
- (i) how the **bank** will meet the outcomes of **BS11**; and
  - (ii) how the **bank** will ensure **parallel rights** for the **bank** are available for **functions** outsourced through the **parent** or an **other related party**; and
  - (iii) the robust back-up arrangements for services and **functions** that are provided by or through an **other related party**; and
  - (iv) how the back-up capability will be activated, including the timeframes for doing so; and
  - (v) the processes that the **bank** will implement to deliver the outcomes described in section B1.1(3), from the point of separation from its **parent** to the point the outcomes are attained on a standalone basis.
- (c) details of which staff positions are responsible for taking these actions, including a clear chain of command and a communications plan; and
- (d) the relevant timeframes under which the separation and transition will be undertaken; and
- (e) the technology and other resource needed by the **bank** to implement its separation plan.
- (2) In preparing its separation plan, the **bank** must prepare for an abrupt loss of access to the services and **functions** provided by the **parent** or an **other related party** both on the **day of failure** and **thereafter**.

*Guidance: While a **bank** may have contractual arrangements in place for its **parent** and an **other related party** to provide transition services and **functions** in the event of separation, these contracts should not be relied upon for the purposes of the separation plan. However, **banks** may continue to rely on contractual arrangements that are in substance unaffected by the separation. The Reserve Bank may issue additional guidance to **banks** on how to produce separation plans.*

- (3) The **bank** must include the separation plan within the scope of the external reviews of the bank's compliance with the outsourcing policy, as set out in Part D.

### **B5.3 Non-objection required for separation plan**

- (1) A **bank** must obtain non-objection from the Reserve Bank before the **bank** finalises its separation plan.

### **B5.4 Application for non-objection**

- (1) A **bank** must apply to the Reserve Bank for non-objection.
- (2) An application for non-objection must be made to the Reserve Bank.
- (3) A **bank** may only submit a draft separation plan for Reserve Bank non-objection after it has been approved by the senior management and Board of the **bank**.

### **B5.5 Consideration of application**

- (1) On receiving an application for non-objection to a separation plan from a **bank**, the Reserve Bank will do one of the following things:
- (a) it may issue the **bank** with a notice of non-objection to the separation plan; or
  - (b) it may require the **bank** to make modifications to the proposed separation plan before giving notice of non-objection; or

- (c) it may request the **bank** to provide more information; or
  - (d) it may decline the proposed separation plan.
- (2) The process that the Reserve Bank will follow in responding to an application if it does not issue the non-objection in accordance with subsection (1)(a) is as set out in section B3.3(3) to (5), with references to the **outsourcing arrangement** being read as references to the separation plan.
- (3) To avoid doubt, regardless of the issue by the **Reserve Bank** of a notice of non-objection, it is the **bank's** responsibility to ensure the separation plan is, and remains, compliant with **BS11**.

*Guidance: A notice of non-objection from the Reserve Bank to a separation plan is made on the basis of information a bank provides to the Reserve Bank. A notice of non-objection does not constitute a safe-harbour. It is the bank's responsibility to ensure a separation plan is compliant with the policy and continues to be so.*

### **B5.6 Bank to test separation plan annually**

- (1) The **bank** must ensure that the separation plan is tested regularly, and at least **annually**.
- (2) The **bank** must, after completing the separation plan test, report the results of the test–
- (a) to the Board of the **bank** at the next Board meeting; and
  - (b) to the Reserve Bank within 8 weeks.
- (3) However, despite subsection (2)(b), if the **bank** identifies any impediments to the separation process during the test it must–
- (a) advise the Reserve Bank, within 24 hours of the impediment being identified, of the fact that an impediment has been identified and, if possible, the cause of that impediment; and
  - (b) if the cause of the impediment cannot reasonably be identified within the 24 hours specified in paragraph (a), advise the Reserve Bank of the cause as soon as reasonably practicable, but not later than two weeks of the impediment being identified; and
  - (c) as soon as reasonably practicable, and no later than two weeks after the impediment was identified, provide the Reserve Bank with details of how the bank proposes to remedy the impediment.

### **B5.7 Reporting of changes to, and review of, separation plan**

- (1) A **bank** must report all changes to its separation plan to the **Reserve Bank**.
- (2) If the Reserve Bank considers a change reported to it under subsection (1) to be material, the **bank** will be required to make modifications to its separation plan and submit a further application in accordance with section B5.4, for consideration by the **Reserve Bank**.
- (3) The **Reserve Bank** may review a **bank's** separation plan at any time.
- (4) Following a review of a **bank's** separation plan, the **Reserve Bank** may require the **bank** to make modifications to that plan, in which case the **bank** must submit a further application, in accordance with section B5.4, for consideration by the Reserve Bank.

## Part C: Reserve Bank lists

### C1 Pre-approved services and functions

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#### C1.1 Reserve Bank may maintain list of pre-approved services and functions

- (1) The Reserve Bank may maintain a list of services and **functions**–
- (a) that, if carried out for the **bank** by a **third party**, constitute **outsourcing arrangements**; but
  - (b) which do not require Reserve Bank non-objection.

*Guidance: The effect of this provision is that the bank may enter into such arrangements without the need to obtain non-objection under Part B3.*

- (2) If the Reserve Bank chooses to maintain such a list, it will be referred to as the **List of Pre-approved Services and Functions**, and will be publicly available on the Reserve Bank's internet site.
- (3) A **bank** that outsources a service or **function** on the **List of Pre-approved Services and Functions** must, in relation to that **outsourcing arrangement**, still comply with all other requirements of **BS11**.

#### C1.2 Amendments to List of Pre-approved Services and Functions

- (1) A **bank** may apply in writing to the Reserve Bank to have new services or **functions** added to the **List of Pre-Approved Services and Functions**.

*Guidance: The application form for this purpose is available on the Reserve Bank's internet site.*

- (2) The Reserve Bank may also at its discretion make the following changes to the **List of Pre-Approved Services and Functions**–
- (a) add a new service or **function**; or
  - (b) remove an existing service or **function**; or
  - (c) amend the description of an existing service or **function**.
- (3) However, before removing, or amending the description of, an existing service or **function**, the Reserve Bank will consult with **large banks**.
- (4) Following any change made in accordance with this section, the Reserve Bank will publish a revised **List of Pre-Approved Services and Functions** on its internet site.

### C2 Exempt services and functions

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#### C2.1 Reserve Bank may maintain list of exempt services and functions

- (1) The Reserve Bank may maintain a list of services and **functions**–
- (a) that, if carried out by a **third party**, constitute **outsourcing arrangements**; but
  - (b) that are not relevant to **BS11**.

*Guidance: The effect of this provision is that the bank may enter into such arrangements without the need to obtain non-objection under Part B3.*

- (2) If the Reserve Bank chooses to maintain such a list, it will be referred to as the **White List**, and will be publicly available on the Reserve Bank's internet site.

- (3) A **bank** that outsources a service or **function** on the **White List** is not, in relation to that **outsourcing arrangement**, required to comply with any of the requirements of **BS11**.

## **C2.2 Amendments to the White List**

- (1) A **bank** may apply, in writing, to the Reserve Bank to have new services or **functions** added to the **White List**.

*Guidance: The application form for this purpose is available on the Reserve Bank internet site.*

- (2) The Reserve Bank may also, at its discretion, make the following changes to the **White List** –
- (a) add a new service or **function**; or
  - (b) remove an existing service or **function**; or
  - (c) amend the description of an existing service or **function**.
- (3) However, before removing, or amending the description of, a service or **function**, the **Reserve Bank** will consult with **large banks**.
- (4) Following any change made in accordance with this section, the Reserve Bank will publish a revised version of the **White List** on its internet site.

## Part D: Transitional and external review arrangements

### D1 Path to compliance and external review

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#### D1.1 5-year transition period

- (1) A **bank's outsourcing arrangements** must be fully compliant with **BS11** no later than 5 years after the **commencement date** (the **5-year transition period**).
- (2) The 5-year transition period is inclusive of any time that the **bank** takes in planning its path to compliance and reaching agreement with the Reserve Bank on such a plan.

*Guidance: A **bank** is expected to have reached agreement with its Reserve Bank supervisor on its plan to compliance within 6 months from the date of the revised outsourcing policy becoming a condition of registration for that **bank**.*

#### D1.2 Annual external review during 5-year transition period

- (1) During each year of the 5-year transition period, the **bank** must obtain an annual independent, external advisory review.
- (2) The purpose of this review is to assess whether or not –
  - (a) the **bank** is achieving the agreed timeframes for the path to compliance with **BS11**, as provided for under section D1.1; and
  - (b) the **outsourcing arrangements** that the **bank** has amended in order to meet the requirements of **BS11** have been amended appropriately and do, in fact, meet the requirements of **BS11**.

*Guidance: If a review reveals that a **bank** is not meeting the agreed timeframe for compliance, the Reserve Bank will use the review to determine whether further supervisory action is required.*

#### D1.3 Appointment of external reviewer

- (1) The Reserve Bank must approve both the **person** nominated by the **bank** to carry out the **annual** independent external review, and the terms of reference for the review.

*Guidance: It is the **bank's** responsibility to seek, and obtain, the Reserve Bank's approval. The **bank** must also ensure that such approval is sought at the appropriate time, so as to ensure that approval is granted in time for the review to take place as planned.*

- (2) The **bank** is responsible for paying all costs incurred in carrying out an **annual** review.

### D2 Reviews after 5-year transition period

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#### D2.1 3-yearly reviews

- (1) Following the 5-year transition period, the **bank** is required to fully comply with its conditions of registration in relation to **BS11**, and its compliance with **BS11** must be externally reviewed no later than once every 3 years. This review will be a reasonable assurance review.
- (2) The first 3-yearly review will be required to be completed within 3 years of the date on which the 5-year transition period ends, and each subsequent review required to be completed within 3 years of the date of the completion of the previous 3-yearly review.
- (3) The purpose of the 3-yearly review is to assess whether or not the **bank**, its **outsourcing arrangements** and its separation plan are compliant with **BS11**.

**D2.2 Appointment of external reviewer**

- (1) The Reserve Bank must approve both the **person** nominated by the **bank** to carry out the 3-yearly independent external review, and that **person's** terms of reference.

*Guidance: It is the **bank's** responsibility to seek, and obtain, the Reserve Bank's approval. The **bank** must also ensure that such approval is sought at the appropriate time, so as to ensure that approval is granted in time for the review to take place as planned.*

- (2) The **bank** is responsible for paying all costs incurred in carrying out an **annual** review.

# Appendix one: Conditions of Registration

## 1 Conditions of Registration

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### 1.1 General conditions of registration

- (1) Locally incorporated banks whose **net liabilities** exceed \$10 billion will be subject to a condition of registration relating to **outsourcing arrangements**. That condition is:
  - (a) That the **bank** must comply with the Reserve Bank of New Zealand document “Outsourcing policy” (**BS11**) September 2017.
- (2) In addition, banks subject to the condition of registration in 1.1(1)(a) are generally subject to a condition of registration regarding accountability:
  - (a) That the business and affairs of the **bank** are managed by, or under the direction or supervision of, the board of the **bank**;
  - (b) That the employment contract of the chief executive officer of the **bank** or **person** in an equivalent position (together “CEO”) is with the **bank**, and the terms and conditions of the CEO’s employment agreement are determined by, and any decisions relating to the employment or termination of employment of the CEO are made by, the board of the **bank**; and
  - (c) That all staff employed by the **bank** have their remuneration determined by (or under the delegated authority of) the board or the CEO of the **bank** and are accountable (directly or indirectly) to the CEO of the bank.

### 1.2 Application of conditions of registration

- (1) A **large bank** that is subject to the January 2006 version of **BS11** will be subject to conditions of registration requiring it to comply with this policy.
- (2) The Reserve Bank may by imposing conditions of registration require a **bank** that becomes a **large bank** after the **commencement date** to comply with parts or all of this policy. Whether the **bank** meets the definition of **large bank** will be determined based on the **bank’s** most recent disclosure statement.
- (3) The Reserve Bank may require a **bank** that was **large bank** as at the **commencement date** but, at a later date no longer meets the **large bank** threshold, to continue to comply with parts or all of this policy by choosing whether or not to amend the **bank’s** conditions of registration. Whether the **bank** meets the definition of **large bank** will be determined based on the **bank’s** most recent disclosure statement.