

Consultation paper: Authorisations for the use of restricted words by overseas banks

The Reserve Bank invites submissions on this consultation paper by 5pm on 6 June 2018.

Submissions and enquiries about the consultation should be addressed to:

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Publication of submissions

Important Disclosure Statement

All information in submissions will be made public unless you indicate you would like all or part of your submission to remain confidential. Submitters who would like part of their submission to remain confidential should provide both a confidential and public version of their submission. Apart from redactions of the information to be withheld (i.e. blacking out of text) the two versions should be identical.

Submitters who request that all or part of their submission be treated as confidential should provide reasons why this information should be withheld if a request is made for it under the Official Information Act 1982 (OIA). These reasons should refer to section 105 of the Reserve Bank of New Zealand Act 1989, section 54 of the Non-Bank Deposit Takers Act, section 135 of the Insurance (Prudential) Supervision Act 2010 (as applicable); or the grounds for withholding information under the OIA. If an OIA request for redacted information is made the Reserve Bank will make its own assessment of what must be released taking into account the submitter's views.

The Reserve Bank may also publish an anonymised summary of the submissions received in respect of this consultation Paper.

April 2018

Introduction

1. Section 64 of the Reserve Bank Act of New Zealand Act 1989 (the 'Act') makes it an offence for a person that is not a registered bank to carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) while using a name or title that includes a restricted word ("bank", "banker", "banking", etc.) unless the person receives an authorisation from the Reserve Bank or is otherwise exempt under the Act.¹
2. Section 65(1) of the Act lists the categories of person that the Reserve Bank may authorise to use a name or title that includes a restricted word and includes for purposes of this consultation:
 - a) a person licensed or registered as a bank in a country other than New Zealand; and
 - b) a class of persons licensed or registered as banks in a country other than New Zealand.
3. The purpose of this paper to elicit feedback from stakeholders on the Reserve Bank's approach to interpreting section 64(1)(c) and policy proposals for considering and granting applications for authorisations by overseas banks under sections 65(1)(a) and (b) of the Act. The proposals in this paper are not designed to expand the scope for overseas banks to operate in New Zealand. Instead, they aim to provide a more rigorous and transparent basis for the Reserve Bank's approach to managing rules around the use of restricted words.
4. The Reserve Bank has had a practice of providing non-objections (or 'letters of non-action') to small numbers of overseas banks that are not registered as banks in New Zealand allowing them to carry on limited activities in New Zealand using names or titles that include restricted words. These letters indicate that the Reserve Bank does not object to their use of the restricted words for certain specified activities. Activities that have been non-objected to include:
 - loans to corporates;
 - the provision of wholesale services (FX spots and forwards, interest rate swaps, underwriting debt and equity issuances, bond trading etc.); and
 - certain very limited forms of retail banking.
5. The Reserve Bank has reviewed its approach to overseas banks carrying on activities in New Zealand and intends to move away from non-objection letters to authorisations under sections 65(1)(a) and (b) of the Act. At the same time, the Reserve Bank has reconsidered the criteria it will apply when considering applications from overseas banks to carry on activities in New Zealand using a name or title that includes a restricted word. There are some proposed new requirements that will apply to any overseas bank seeking to carry on activities in New Zealand using restricted words without becoming a registered bank. These include being listed on a register of authorised banks on the Reserve Bank website and annual reporting requirements. However, the discretion to

¹ Section 64(1)(c) and (2) of the Reserve Bank of New Zealand Act 1989. The persons described in section 66 are exempted from the application of section 64 but this exemption is not available to overseas banks. See: <http://www.legislation.govt.nz/act/public/1989/0157/latest/DLM200082.html>

impose conditions on overseas banks that are not registered but still permitted to carry on activities in New Zealand is not a new power for the Reserve Bank. The Reserve Bank has had the power to authorise overseas banks, and place conditions on authorisations, since the Reserve Bank of New Zealand Amendment Act 2003.² Additionally, the past 'letters of no-action' issued by the Reserve Bank have also included conditions for recipient overseas banks.

6. So that stakeholders can properly understand when authorisation for an overseas bank may be required and the Reserve Bank's approach to granting authorisations, the Reserve Bank intends to publish two guidance notes. Exposure drafts of these guidance notes are included in this document for consultation.
7. The two guidance notes will sit outside the Reserve Bank's 'Banking Supervision Handbook' (the 'Handbook'). This is because the Handbook details the policy framework and rules that apply to registered banks in New Zealand.
8. The first guidance note is titled "Guidance note for overseas banks on limitations on the use of restricted words". It is intended to help overseas banks that are not registered in New Zealand understand the scope of the limitation on using restricted words and the concept of carrying on activities in New Zealand under section 64(1)(c). By doing so it aims to clarify some conditions under which the activities of overseas banks will be subject to the limitation in section 64(1)(c).
9. The second guidance note is titled "Guidance note on the Reserve Bank's approach to section 65(1) authorisations for overseas banks". This note is intended to set out the Reserve Bank's policy and processes for granting authorisations to overseas banks to allow them to use restricted words in a name or title when carrying on activities in New Zealand. It provides guidance on the circumstances where the Reserve Bank may grant an authorisation to an overseas bank and also guidance on what conditions may apply to an authorisation.
10. The purpose of Part 4 of the Act is to prevent entities that are not registered banks (and therefore are not subject to the Reserve Bank's regulatory and supervisory regime for banks) from passing themselves off as such, and so misleading the public as to their nature and financial standing.³ Also relevant, is section 1A of the Act. One of the three responsibilities this section imparts on the Reserve Bank is "promoting the maintenance of a sound and efficient financial system". With these purposes in mind, the Reserve Bank's starting position is that an overseas bank that wants to carry on activities in New Zealand should apply to be registered as a bank under the Act.
11. The Reserve Bank believes that in situations where overseas banks are not carrying on retail activity in New Zealand, where there is no physical presence in New Zealand, and the overseas bank meets the other criteria set out in the draft guidance there will be limited risk of the New Zealand public being deceived as well as limited risk to financial

² Prior to the Reserve Bank of New Zealand Amendment Act 2003, the Act provided the Reserve Bank a power to authorise the use of restricted words by an overseas banks, in connection with the establishment or operation of a representative office, and such authorisations could be subject to conditions.

³ While this purpose is not explicitly stated in the Act itself, this purpose is clear from the overall operation of this Part as well as from statements in the Hansard debates preceding the Reserve Bank of New Zealand Amendment Act 2003 that Part 4 "has the objective of preventing entities that are not registered banks from passing themselves of as such, and thereby misleading the public as to their nature and financial standing". See: https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansS_20030814_00001005/cullen-michael-reserve-bank-of-new-zealand-amendment

stability more generally. At the same time, authorising such overseas banks will likely support the efficiency of the New Zealand financial system by increasing choice and competition. Potentially, some services and products provided by authorised overseas banks may not be available from registered New Zealand banks. Overall, the Reserve Bank believes that authorisations for overseas banks will likely provide net benefits to the New Zealand financial system.

12. As noted, the Reserve Bank's intention is not to expand the scope for overseas banks that are not registered as banks to carry on activities in New Zealand. These proposals are aimed at increasing transparency. They include establishing a register of authorised overseas banks on the Reserve Bank's website and also publishing all notices of authorisation.
13. Authorisations made under sections 65(1) (c), (d), (e) and (f) are out of scope of this consultation. These includes authorisations for persons who represent the interests of any registered bank, are an associated person of a registered bank, or are not financial institutions (for example a 'food-bank'). Persons seeking authorisation under these sections should contact the Reserve Bank in the first instance.
14. The Reserve Bank has specific questions at the end of this document that it would like feedback on from stakeholders. In addition, the Reserve Bank would also like to know of all instances where stakeholders believe the wording of either exposure draft document is unclear, incorrect or incomplete.

Next steps

15. The consultation period on the two exposure drafts closes at 5pm on 6 June 2018. Following that the Reserve Bank will review the submissions received. Once this review is complete, and any changes to the exposure drafts are made, the Reserve Bank will publish finalised copies of the guidance notes on its website. Publication will likely be in Q2 of 2018.
16. Until a new policy for sections 65(1) (a) and (b) is finalised, the Reserve Bank will not be assessing new applications by overseas banks to carry on activities in New Zealand using restricted words without becoming registered banks in New Zealand. Overseas Banks that already have letters of non-objection may continue to carry on activities in New Zealand, subject to any conditions imposed by the letters, in the interim. There will likely be a further transitional period after the new policy for section 65(1)(a) and (b) is formally introduced for overseas banks who already have letters of non-objection.
17. Also note that dependent on other priorities and resourcing, the Reserve Bank may undertake a full review of Part 4 of the Act in the next few years. A full review of Part 4 may consider whether to move away from a regulatory regime based around naming-rights (i.e. a person must become registered as a bank to use restricted words without limitation) to an activities based regulatory regime.⁴ Under an activities based regulatory regime, a person would be required to be registered and therefore subject to regulation and supervision by the Reserve Bank if the person is carrying on banking business irrespective of whether the person uses a restricted word in its name or title.
18. The remainder of this paper is as follows:

⁴ Although a person who is not a bank but who does take retail deposits may be a non-bank deposit taker and therefore subject to the Reserve Bank's powers under the Non-Bank Deposit Takers Act 2013.

- Appendix A contains the draft document “Guidance note for overseas banks on limitations on the use of restricted words”;
- Appendix B contains the draft document “Guidance note on the Reserve Bank’s approach to section 65 authorisations for overseas banks”; and
- Appendix C contains the specific questions the Reserve Bank would like feedback on.

Appendix A



Guidance note for overseas banks on limitations on the use of restricted words

About this guidance

Section 64 of the Reserve Bank of New Zealand Act 1989 (**the Act**) makes it an offence for persons to include in their names or titles certain restricted words or carry on activities in New Zealand using names or titles that include restricted words, except where an exemption or statutory exception applies or the Reserve Bank gives an authorisation.

This guidance is intended to help overseas banks that are not registered in New Zealand understand the scope of the limitation on using restricted words and the concept of carrying on activities in New Zealand under section 64(1)(c). By doing so it aims to clarify some conditions under which the activities of overseas banks will be subject to the limitation in section 64(1)(c).

It is divided into four parts:

- Part 1 provides an outline of the relevant legislative provisions.
- Part 2 sets out the purposes of the limitations.
- Part 3 expands on the concept of carrying on activities in New Zealand under section 64(1)(c), including some of the factors that the Reserve Bank considers should be taken into account by overseas banks.
- Part 4 sets out how section 64(1)(c) applies to scenarios relating to establishing and maintaining customer account relationships with New Zealand persons.

The material in this document is guidance only, and does not override the provisions of the Act. It does not constitute legal advice. We encourage overseas banks to obtain their own legal advice if they are in any doubt as to their obligations under the law.

The guidance applies only to the limitations on restricted words in the Act. Provisions in other areas of New Zealand law may apply to activities carried on in New Zealand by overseas banks (e.g. Financial Service Providers (Registration and Dispute Resolution) Act 2008, Financial Markets Conduct Act 2013).

The Reserve Bank has published a separate document titled “Guidance note on the Reserve Bank’s approach to section 65 authorisations for overseas banks”. This document sets out under what circumstances an overseas bank that wishes to ‘carry on an activity in New Zealand’ using a name or title that includes a restricted word, may do so without becoming a registered bank in New Zealand. The document also sets out what conditions of authorisation will generally apply.

All statutory references are references to the Act unless otherwise stated.

Part 1: Limits on the use of restricted words in name or title

1. Under section 2, the following are restricted words:
 - 'bank', 'banker', and 'banking';
 - any of the above words as part of any other word (e.g. 'trustbank'); and
 - a translation of the above words into any other language (whether or not the language is widely spoken or where the translation is part of another word) (e.g. 'banc', 'banco' or 'banque').

2. Under section 64(1), no person may:
 - be formed, incorporated, or registered using a name or title that includes a restricted word;
 - change a person's name or title to a name or title that includes a restricted word;
 - or
 - carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word.

3. The first limitation includes an overseas company that is required to be registered as an overseas company under the Companies Act 1993 (sections 332-336). The second limitation includes a New Zealand registered overseas company that wishes to change its name or title to a name or title that includes a restricted word. This guidance is directed at the third limitation and how it applies to activities of overseas banks whose name or title includes a restricted word.

4. Under section 64(2), the limits in section 64(1) on using restricted words in names or titles do not apply to:
 - the Reserve Bank;
 - a bank registered under the Act;
 - a person **authorised** by the Reserve Bank under section 65; or
 - a person **exempted** under section 66.

5. Overseas banks may use restricted words when carrying on activities in New Zealand if they register as registered banks or are authorised by the Reserve Bank (but only to the extent of the authorisation). The threshold question is whether activities are being carried on in New Zealand by the overseas bank. Where activities are not being carried on in New Zealand by an overseas bank (whether directly or indirectly) for the purposes of section 64(1)(c) then the limitation does not apply.

Part 2: The purposes of the limitations on restricted words

6. One purpose of section 64(1) is to prevent potential customers being misled about the status or standing of an entity as a registered bank supervised by the Reserve Bank, with the potential harm that may result from this. A key harm is that a New Zealand person may place funds or otherwise transact with an entity lacking the financial strength that could be expected of a registered and supervised bank and believing that deposits may be more secure than is really the case. One circumstance in which funds deposited with an overseas bank could be less secure for New Zealand resident depositors is where the home jurisdiction gives creditor priority to residents over non-residents.
7. Other purposes of the section 64(1) limitations are to:
 - protect the principal legal benefit of registration as a bank under the Act, being the ability of a registered bank to use a name or title that includes the word “bank” or its derivatives without limitation with banks entitled to this benefit being regulated and supervised; and
 - enable the Reserve Bank to limit the use of restricted words to institutions that are registered and supervised as banks where this is necessary to fulfil the Reserve Bank’s purpose to promote the maintenance of a sound and efficient financial system.
8. The Reserve Bank takes a purposive approach to interpreting section 64(1), taking into account the above matters. This means the Reserve Bank will not take a formulaic approach to interpreting section 64(1)(c), rather it will consider the individual circumstances of each situation. Along the continuum of what might constitute carrying on activities in New Zealand (as described in Part 3) the purposive approach tends to exclude activities that may be regarded as passive.

Part 3: The concept of carrying on activities in New Zealand under section 64(1)(c)

9. There are five elements to section 64(1)(c):

- there is an activity;
- the activity is being carried on;
- the activity may be carried on directly or indirectly;
- the activity is carried on in New Zealand; and
- the activity being carried on uses a name or title that includes a restricted word.

*There is an **activity***

10. The term “activity” is broad. It includes electronic and telephone activities such as online services, internet sites and telephone calls.

*The activity is being **carried on***

11. To be “carried on” an activity must be repeated or have some continuity. In determining whether an activity is “carried on”, the frequency of activities will be assessed on a case-by-case basis, taking into account the nature of the activity. Occasional or one-off activities are not “carried on”. A series of occasional acts, however, may collectively be an activity “carried on” if there is some connection between them.

*The activity may be carried on **directly or indirectly***

12. The activity does not need to be carried on directly by the overseas bank using a restricted word. Activities carried on by an overseas bank indirectly through intermediaries such as agents in New Zealand will be subject to the limitations on restricted words. In these cases the activities of the intermediary are attributed to the overseas bank provided the name of the overseas bank is used by the intermediary.

*The activity is carried on **in New Zealand***

13. The fact that an activity is carried on in relation to a person in New Zealand does not mean the activity is carried on in New Zealand; something more is required. Any physical presence on the part of the overseas bank in New Zealand, such as establishing a place of business in New Zealand or maintaining staff on a permanent basis in New Zealand, will clearly constitute an activity being carried on in New Zealand.

14. Where the overseas bank does not have a physical presence in New Zealand, the Reserve Bank will look to pre-contractual circumstances and the place where the contract is performed to assess whether the activities are carried on in New Zealand. Activities that may be regarded as occurring in New Zealand include:

- Marketing of financial products or services that targets a New Zealand audience;
- Making targeted visits to potential customers in New Zealand to offer financial products or services;

- Approaching potential customers in New Zealand by direct mail or email offering financial products or services, or through a New Zealand intermediary such as an agent;
- Registering and operating a New Zealand website domain; and
- Taking mortgages or other security over property in New Zealand.

15. For the purposes of section 64(1)(c), an activity is not carried on in New Zealand simply because:

- There is an overseas domained website accessible to New Zealanders, unless the website clearly targets New Zealand persons by having New Zealand specific information such as New Zealand contact details;
- A general publication of an overseas bank that mentions current New Zealand customers; or
- There are direct communications with New Zealand persons in the context of an existing customer relationship that was established overseas or is otherwise not subject to section 64 (see paragraph 18 and Part 4 of this note).

16. Whether an activity is carried on “in New Zealand” is a fact-driven assessment that will include the quantum of an overseas bank’s New Zealand connected business.

*The activity being carried on **uses** a name or title that includes a restricted word*

17. The name or title including the restricted word must be used to further the carrying on of the activity, i.e. the name is used to advance or promote the activity. It will usually be sufficient that the entity carrying out the activity operates under a name including a restricted word in the course of the activities carried on in New Zealand. However, activities carried on between an overseas bank and an affiliate in New Zealand are likely to be based on related party relationships and corporate control rather than use being made of a name or title that includes a restricted word. For this reason, the Reserve Bank considers that the provision of back-office services by an overseas bank to an affiliated financial institution in New Zealand is unlikely to be subject to the limitations on restricted words.

Applicability to wholesale activities involving New Zealand wholesale customers

18. The Reserve Bank recognises that transactions involving overseas banks and New Zealand wholesale customers are often initiated by the customer independently and proactively requesting services from an overseas bank. These contacts may involve a request from the New Zealand person for a representative of an overseas bank to make a customer visit to New Zealand. If contacts of this nature lead to a one-off contract that is subject to an overseas legal and regulatory regime and clearly will be substantially performed overseas the Reserve Bank is likely to consider activities related to such a contract as of insufficient magnitude to engage section 64(1)(c). Similarly, transactions between registered banks and overseas banks participating in the international interbank market will not be considered to engage section 64(1)(c). The interbank market is carried on through a global network of banks borrowing and lending among themselves. The market is generally facilitated by electronic platforms operated by overseas brokers with transaction activity based on the standing and creditworthiness of the banks involved.

Part 4: Scenarios relating to overseas banks establishing and maintaining customer account relationships with New Zealand persons

19. There are three general scenarios in which overseas banks may establish and maintain customer account relationships with New Zealand persons:

- A person opens a bank account while living overseas and maintains it upon coming to New Zealand;
- A New Zealand person, on their own initiative, approaches an overseas bank to open a bank account (“reverse solicitation”); and
- An overseas bank actively offers New Zealand persons accounts with the overseas bank by targeting marketing efforts on the New Zealand market (“direct solicitation”).

A person opens a bank account while living overseas and maintains it upon coming to New Zealand.

20. In this scenario, the relevant activities of the overseas bank occur outside New Zealand. The activities are connected to the overseas bank’s jurisdiction, and have little to no bearing within New Zealand outside the customer’s nationality. Retention of the account by the New Zealand person is not enough to cause the overseas bank to carry on activities in New Zealand.

A New Zealand person, on their own initiative, approaches an overseas bank to open a bank account (“reverse solicitation”).

21. In this scenario, the relevant activities occur outside New Zealand. The Reserve Bank considers that the section 64(1)(c) limitation is not intended to restrict the ability of New Zealand persons to contract with overseas banks if they wish. It would be unduly restrictive to treat an overseas bank as carrying on an activity in New Zealand simply because they are approached by a New Zealand person. Overseas banks relying on reverse solicitation to avoid the limitation in section 64(1)(c) are advised to document the unsolicited nature of the request. Reverse solicitation also presupposes the absence of any prior communication made to the person in relation to requested account.

An overseas bank actively offers New Zealand persons accounts with the overseas bank by targeting marketing efforts on the New Zealand market (“direct solicitation”).

22. Where an overseas bank actively offers bank accounts to New Zealand persons (directly or indirectly), the Reserve Bank considers that the corresponding activities are carried on in New Zealand for purposes of section 64(1)(c). In this scenario, the actions of the overseas bank are designed to influence the behaviour of persons in New Zealand to enter into a customer relationship with the overseas bank. Direct solicitation may involve direct communications or advertisements, made through different forms of media (including internet sites). See above from paragraph 14 for further detail.

23. The above scenarios and other information in this guidance note is provided as a guide to overseas banks, and their advisors, in applying section 64(1)(c). However, the application

of section 64(1)(c) to particular circumstances calls for a fact driven analysis. It is possible other circumstances may arise, not covered by this guidance note, that relate to section 64(1)(c)

Appendix B



Guidance note on the Reserve Bank's approach to section 65 authorisations for overseas banks

About this guidance

The guidance explains the process by which an overseas bank that wishes to 'carry on activities in New Zealand' using restricted words in its name or title may apply for an authorisation under section 65(1).

The Reserve Bank of New Zealand (hereafter 'the Reserve Bank') has published a separate guidance note intended to help overseas banks that are not registered in New Zealand understand the scope of the limitation on using restricted words and the concept of carrying on activities in New Zealand under section 64(1)(c) of the Reserve Bank of New Zealand Act 1989 (the 'Act'). Overseas banks should consult that document in the first instance if they are uncertain whether planned activities would be captured by section 64(1)(c) of the Act.

A key purpose of Part 4 of the Act (which governs the use of restricted words and includes sections 64 and 65) is to prevent the public from being led to believe an institution is a registered bank when it is not, and therefore be misled about the institution's nature and standing in New Zealand's financial markets. Additionally, one of the responsibilities of the Reserve Bank of New Zealand is to promote the maintenance of a sound and efficient financial system (see section 1A(b) of the Act). The Reserve Bank's powers to regulate the banking sector to achieve this purpose can largely be applied to registered banks only.

The most obvious risk to financial stability arises if overseas banks that are not registered in New Zealand become significant takers of New Zealand retail deposits. There may also be risks if the amount of activity by authorised banks reaches a certain scale. For example, a large proportion of New Zealand economic activity may become reliant on lending by banks that are not subject to banking regulation in New Zealand and macro prudential policies would be less effective. Furthermore, registered banks may be disadvantaged (authorised banks would not be incurring the same regulatory burden) and this may undermine the Reserve Bank's regulatory regime for banks. For example, overseas banks looking to enter the New Zealand market may decide to seek authorisations rather than register.

Therefore, as a general rule, the Reserve Bank expects that overseas banks wanting to carry on activity in New Zealand should apply to become registered banks in New Zealand.

On the other hand, allowing overseas banks to carry on limited activities in New Zealand may bring efficiency benefits. These benefits could include increased competition and choice for New Zealand firms. There may also be some niche banking products and services that registered banks do not offer.

Weighing these concerns up, the Reserve Bank is of the opinion that there are limited situations where authorising an overseas bank to undertake limited activities in New Zealand using restricted words in its name or title will be unlikely to mislead the public and could have a net positive impact on the soundness and efficiency of the New Zealand financial system. Among other factors set out in this guidance note, the overseas bank having no physical presence in New Zealand and only dealing with wholesale clients are likely pre-conditions for such situations.

Note that it is not unusual internationally for foreign banks to be permitted to undertake limited activities in a jurisdiction where they are not licensed.⁵ However, New Zealand is unusual in terms of the importance of naming-rights for its bank regulation and supervisory regime. That is, a financial institution may carry on banking business in New Zealand without being

⁵ Australia is one example. See: <http://www.apra.gov.au/adi/Publications/Pages/Letter-to-ADIs-Operation-of-Foreign-Banks-in-Australia-23092013.aspx>

registered as a bank, provided it does not use a restricted word in its name. It is more common for regulatory regimes to require licensing or authorisation to carry on a particular activity. Under an activities based regulatory regime, the business of banking would be defined and a person would only be able to carry on banking business if licensed, becoming subject to regulation and supervision as a bank.

Should the Reserve Bank become aware of an overseas bank carrying on activity in New Zealand as per section 64(1)(c) without being registered as a bank in New Zealand or authorised under section 65(1), the Reserve Bank may take enforcement action. This may include publishing public warning notices or seeking actions from the bank's home supervisor. If the overseas bank is also registered under the Companies Act 1993, then the Reserve Bank may additionally be able to take enforcement action through the New Zealand courts.

This guidance is divided into five parts.

- Part 1 describes circumstances under which an overseas bank may be eligible for a section 65(1) authorisation and what activities may be authorised.
- Part 2 describes what conditions may be attached by the Reserve Bank to a section 65(1) authorisation for an overseas bank.
- Part 3 sets out the process for how an overseas bank should apply for a section 65(1) authorisation
- Part 4 sets out transitional arrangements.
- Part 5 contains an application form for individual authorisations

Note that provisions in other areas of New Zealand law may apply to activities carried on in New Zealand by overseas banks (e.g. Financial Service Providers (Registration and Dispute Resolution) Act 2008, Financial Markets Conduct Act 2013, Anti-Money Laundering and Countering Financing of Terrorism Act 2009). Such provisions are out of scope of this guidance note.

All statutory references are references to the Act unless otherwise stated.

Part 1: Activities available for authorisation and factors the Reserve Bank will consider in assessing applications

1. Section 65(1) of the Act permits the Reserve Bank to authorise certain categories of persons to use names or titles that include a restricted word (“bank” and its derivatives).
2. These categories include:
 - (a) a person licensed or registered as a bank in a country other than New Zealand; and
 - (b) a class of person licensed or registered as banks in a country other than New Zealand.
3. In the case of an individual authorisation (2.(a)), section 65(2) of the Act requires the Reserve Bank to:
 - (a) give the authorisation by notice in writing to the person; and
 - (b) impose both of the following conditions:
 - (i) that the person use a particular name or title approved by the Reserve Bank; and
 - (ii) that the person carry on in New Zealand only those activities specified by the Reserve Bank in the notice.
4. In the case of a class authorisation (2.(b)), section 65(3) of the Act requires the Reserve Bank to:
 - (a) give the authorisation by notice in the *Gazette*; and
 - (b) impose the condition that each member of the class of persons carries on in New Zealand only those activities specified by the Bank in the notice in the *Gazette* in respect of the class to which that member belongs.
5. Reserve Bank policy is that authorisations under section 65(1) will typically not be granted to overseas banks for activities that involve retail investors as defined by schedule 1 clause 35 of the Financial Markets Conduct Act 2013. The purposes of this restriction are:
 - otherwise, members of the general public may believe they are dealing with a bank that is subject to the full suite of the Reserve Bank’s regulatory and supervisory powers; and

- there is significant risk to New Zealand financial stability when entities unregulated by the Reserve Bank (or other New Zealand authorities) hold New Zealand retail deposits
6. The Reserve Bank may revoke a section 65(1) authorisation at any time by written notice to the overseas bank (for individual authorisations) or by notice in the *Gazette* (for class authorisations).
 7. Section 65 authorisations will only be granted to overseas banks with no permanent presence in New Zealand (e.g. eligible overseas banks must not have permanent staff or place of business in New Zealand). An overseas bank wanting to establish a permanent presence in New Zealand must first become a registered bank in New Zealand.
 8. In addition, the Reserve Bank policy is that authorised activities will be defined as tightly and clearly as warranted in the relevant notices of authorisation. That is, the Reserve Bank is unlikely to provide authorisations for activities defined broadly such as “services to wholesale customers” for example.
 9. In assessing applications for section 65(1) authorisations for overseas banks, the Reserve Bank will consider the following factors:
 - the reasons for the overseas bank seeking authorisation under section 65(1) rather than applying for registration as a bank;
 - the nature of the activities intended to be carried on by the overseas bank;
 - the nature and number of customers the proposed activities will involve;
 - how the overseas bank intends to solicit customers for the proposed activities;
 - the extent of any proposed presence in New Zealand (e.g. how often staff from the bank may visit New Zealand on business);
 - whether or not the proposed activities of the overseas bank are solely in connection with business carried on by the bank overseas;
 - proposed compliance arrangements (e.g. policies and procedures) for ensuring that activities to be carried on in New Zealand will remain within the scope of any authorisation given; and
 - ability of the overseas bank to comply with any proposed conditions of authorisation.
 10. In any individual assessment, the Reserve Bank may consider any other factors it deems relevant.

11. The Reserve Bank may issue class authorisations for overseas banks. Among other factors, the Reserve Bank will consider common themes among applications for individual authorisations it receives in determining what class authorisations may be appropriate.

Part 2: Conditions that may apply to authorisations

12. Section 65(5) notes that the Reserve Bank may impose any further conditions (beyond what is noted in paragraphs 3 and 4 to any authorisation that it sees fit. In addition, the Reserve Bank may at any time vary or remove a condition of authorisation, or add a condition of authorisation, by notice in writing to the person or by notice in the *Gazette* (in the case of a class authorisation).
13. Reserve Bank policy is that the following conditions will be generally applied to any individual authorisation:
 - a) the overseas bank must continue to have no permanent physical presence in New Zealand (e.g. no staff permanently based in New Zealand or a permanent place of business);
 - b) the overseas bank maintains an authorised agent in New Zealand for the purpose of accepting service of documents;
 - c) the overseas bank must submit to the Reserve Bank any information requested regarding its authorised activities.
14. The Reserve Bank may also:
 - impose conditions limiting the type of advertisement or solicitation of customers an authorised overseas bank may undertake;
 - impose conditions limiting business visits to New Zealand by staff of the authorised overseas bank; and
 - impose any other conditions on authorisation that it deems appropriate (including time limiting any authorisation).
15. In regards to the condition that authorised banks provide information requested by the Reserve Bank, such requests are likely to be annual and by way of a template for the overseas bank to complete. Information requested will likely include (as applicable):
 - the number of New Zealand customers per authorised activity;
 - the income for the overseas bank per authorised activity;
 - the claims the overseas bank has against New Zealand counterparties (attributable to authorised activities);
 - the funding the overseas bank has received from New Zealand;
 - the number of staff visits undertaken by the authorised bank in the past year to New Zealand;

- descriptions of how the activities carried on in New Zealand have materially changed over the past year (if at all);
 - descriptions of all types of solicitation/advertisement undertaken in relation to authorised activities;
 - a description of the overseas banks' plans for activities in New Zealand in the future.
16. Information requests may be made by conditions of authorisation or by notices under section 36 of the Act.
17. Failure by an overseas bank to meet a condition of authorisation may result in the Reserve Bank revoking the relevant authorisation.

Part 3: Process for applying for authorisation

18. An overseas bank should first determine whether its proposed activities are caught by section 64(1)(c) before applying for authorisation. The document titled “Guidance note for overseas banks on limitations on the use of restricted words” is intended to help overseas banks understand section 64(1)(c).
19. An overseas bank applying for section 65 authorisation should send the Reserve Bank a completed copy of the form in Part 5 of this document. Completed forms can be emailed to admin.authorisations@rbnz.govt.nz or mailed to:

Enforcement
Prudential Supervision Department
Reserve Bank of New Zealand
PO Box 2498
Wellington 6140
New Zealand
20. Providing detailed and complete answers to the questions in the application form will likely minimise any additional requests for information from the Reserve Bank in regards to an application. However, the individual circumstances of an applicant may mean additional information is relevant.
21. Once a determination on application has been made, the Reserve Bank will respond to the applicant in writing. If the application is successful, the Reserve Bank response will include the notice of authorisation.
22. The Reserve Bank intends to publish a register of authorised overseas banks on its website as well as all notices of authorisation.
23. A likely condition of any class authorisation is that overseas banks must notify the Reserve Bank that they intend to rely upon the class authorisation.
24. Overseas banks must not begin carrying on an activity captured by section 64(1)(c) before an authorisation has been granted by the Reserve Bank.

Part 4: Transitional Arrangements

25. In the past, the Reserve Bank has issued a small number of letters to overseas banks that are not registered banks in New Zealand allowing them to carry on limited activities in New Zealand. These letters indicate that the Reserve Bank does not object to their use of the restricted word “bank” for certain specified activities. Following a policy review, the Reserve Bank has decided to replace this past practise of issuing non-objection letters with authorisations under section 65(1) of the Act.
26. As of [the date the finalised version of this document is published], any overseas bank, which is not a registered bank in New Zealand, must receive a section 65(1) authorisation before beginning to carry on any new activity in New Zealand using a name or title that includes a restricted word. Activities already being carried on by overseas banks under letters of non-objection from the Reserve Bank can continue until [two years after the publication of the finalised version of this document]. During this transition period, affected overseas banks should seek section 65(1) authorisations for activities they want to continue to carry on in New Zealand from [two years after the publication of the finalised version of this document] onwards (or become registered banks in New Zealand). From [two years after the publication of the finalised version of this document], all activities carried on in New Zealand by overseas banks, which are not registered banks in New Zealand, must be authorised under section 65(1).

Part 5: Application form for section 65(1)(a) authorisation

Please note that if authorisation is sought for two or more overseas banks within the same corporate group the Reserve Bank requires separate applications from each individual bank.

1. Specific names or titles to be used when carrying on an activity in New Zealand (note a necessary condition of a section 65(1)(a) authorisation is that the overseas bank only carries on activity in New Zealand using a particular name or title approved by the Reserve Bank).
2. Place where the applicant overseas bank is incorporated or is otherwise formed (please provide full address).
3. Confirm that the applicant overseas bank has a license or registration (or equivalent) as a bank in a country other than New Zealand. Please attach relevant documents to support this claim.
4. Name and contact details for the licensing authority.
5. Name and contact details for the home supervisory authority (if the licensing authority is also the home supervisory authority please simply indicate this).
6. List of other jurisdictions (other than where the overseas bank is incorporated or otherwise formed) where the overseas bank operates.
7. List the proposed activities (note a necessary condition of a section 65(1)(a) authorisation is that it is limited only to those activities specified by the Reserve Bank in the relevant notice of authorisation). Please include for each proposed activity the following information:
<ul style="list-style-type: none"> • the nature and scale of the proposed activity (please provide both qualitative and quantitative information); • a description of the type of customer that the proposed activity will involve (note that authorisations will not typically be granted for activities that involve retail investors as defined by schedule 1 clause 35(1) of the Financial Markets Conduct Act 2013); • a description of how customers will be found for the proposed activity (e.g. will service(s) be offered to new customers or existing customers of the overseas bank only, by what methods does the overseas bank intend to advertise the service(s)? etc.)
8. Describe the proposed extent of any presence in New Zealand including whether staff will visit New Zealand, and if so how often such visits may take place.
9. Does the bank propose to have any other specific New Zealand connections (e.g. will security interest be taken over New Zealand property)?

10. Describe any plans the overseas bank may have for further activity in New Zealand in the future which is not captured by this current application (e.g. plans to make further applications for section 65(1)(a) authorisations, plans to register as a bank in New Zealand at a later date etc.)
11. Explain why the overseas bank is applying for a section 65(1) authorisation rather than applying to become a registered bank in New Zealand
12. Provide full contact details for two persons the Reserve Bank may contact for further information in regards to both this application and further information in the future (if an authorisation is granted)
13. Provide either a New Zealand address for the overseas bank or contact details for a New Zealand authorised agent of the bank. (This is for the purpose of accepting service of documents.)
14. Provide any further information that you think may be relevant to/support the application.
15. Please provide full contact details for the person who has authorised this application on behalf of the overseas bank.

Appendix C

Specific questions for submitters

Q1	Do you agree with the proposal to publish a register of authorised banks? Do you agree with the proposal to publish individual notices of authorisation?
Q2	Do you think the template asks for the right information for the Reserve Bank to consider authorisation applications? Are there redundant questions or questions missing?
Q3	Do you agree with the proposal for annual reporting requirements by authorised banks? Is the proposed content of this reporting appropriate?
Q4	Do you agree with the general criteria the Reserve Bank is proposing to apply to overseas banks seeking authorisation? Are any of the criteria redundant? Do you think others should be applied?