

## ***Application Guidelines for Designation under Part 5C of the Reserve Bank of New Zealand Act 1989***

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This document sets out information for applicants for designation under Part 5C of the Reserve Bank of New Zealand Act 1989.

### **1. Introduction**

Part 5C of the Reserve Bank of New Zealand Act 1989 makes the Reserve Bank and the Financial Markets Authority joint regulators of designated settlement systems. However, it makes the Reserve Bank the sole regulator of designated settlement systems that are declared to be pure payment systems.

Designation under Part 5C is an opt-in regime, with settlement systems needing to apply for designation. A settlement system becomes designated by an Order in Council being made declaring that a settlement system is a designated settlement system. An Order in Council declaring that a settlement system is a designated settlement system may be made by the Governor-General on the advice of the Minister of Finance and the Minister of Commerce given in accordance with a joint recommendation of the Reserve Bank and the Financial Markets Authority.

This document explains the application and designation process and sets out the information that should be included in or accompany an application for designation.

The interests, roles, and policies of the Reserve Bank and the Financial Markets Authority in relation to the oversight and designation of settlement systems, including background to the matters that the joint regulators may take into account in considering an application for designation, are explained in the joint regulators' separate policy statement on the *Designation and Oversight of Designated Settlement Systems* (DSS1).

### **2. Application Process**

There is no standard application form. Applications should be in writing and should be addressed to the Governor of the Reserve Bank and/or to the Chief Executive of the Financial Markets Authority.

A prospective applicant is encouraged to engage with the joint regulators before a formal application is made to identify potential issues. Any queries or requests for pre-application engagement should be addressed to the Head of Prudential

Supervision at the Reserve Bank or to the Manager of Market Infrastructure Oversight of the Financial Markets Authority in the first instance.

The joint regulators may have regard to any or all of the following matters, as discussed in more detail in the joint regulators' *Designation and Oversight of Designated Settlement Systems* (DSS1), in considering an application for designation:

- (a) the purpose and scope of the settlement system,
- (b) the rules of the settlement system,
- (c) any laws or regulatory requirements relating to the operation of the settlement system and the extent to which the settlement system complies with those laws or regulatory requirements,
- (d) relevant international standards concerning clearing and settlement systems, to the extent that they are relevant in the circumstances,
- (e) the capability and capacity of the operators of the settlement system,
- (f) the financial resources of the settlement system,
- (g) the importance of the settlement system to the financial system,
- (h) the impact on creditors of participants in the settlement system of specifying that an operator of the settlement system is an operator to whom section 103A of the Personal Property Securities Act 1999 applies, and
- (i) such other matters as the joint regulators consider appropriate, as set out in the *Designation and Oversight of Designated Settlement Systems* (DSS1) or otherwise made known to an applicant in relation to that applicant's particular circumstances.

An application for designation should assess the settlement system against each of above matters.

The expectation is that a self-assessment against the relevant international standards will be a central part of any application. If the self-assessment against the relevant international standards covers a matter which is also expressly listed as a matter the joint regulators will have regard to, the assessment against that matter in the application should cross reference the relevant part or parts of the international standards self-assessment.

The joint regulators may also require certain matters to be independently verified, at the applicant's cost, and will discuss this with applicants on a case by case basis.

An application should also include the following information:

- (a) The name and contact details of the person to whom questions about the application should be directed.

- (b) The name of the settlement system.
- (c) A brief description of the settlement system, including details of the types, volume and values of the transactions processed by the settlement system.
- (d) A list of the current members or participants in the settlement system, noting the jurisdiction in which each is established, domiciled or has its principal office and whether it is supervised for anti money laundering purposes.
- (e) The rules of the settlement system.
- (f) The name(s) of the operator(s) of the settlement system, identifying the operator proposed to be the “specified operator” for the purposes of Part 5C.
- (g) The contact details and the name or title of the person who is proposed to act as the contact person of the settlement system for the purposes of Part 5C (i.e. the person to whom notices relating to the settlement system must be given for the purposes of Part 5C). Note also that the joint regulators are required to post these details on their respective websites.
- (h) The name of any operator of the settlement system that is a participant in the settlement system.
- (i) Whether any operator of the settlement system is proposed to be specified as an operator to whom section 103A of the Personal Property Securities Act applies and the reasons for that.
- (j) Whether the applicant considers the settlement system to be a pure payment system.

### **3. Fee**

The fee for making an application for designation is \$30,000 (including GST).<sup>1</sup>

The application fee may be paid to either joint regulator. The joint regulator who receives an application fee will advise the other joint regulator that payment has been made.

### **4. Other application-related costs**

As noted above, an applicant may also need to provide third party verification on some matters. The costs associated with any such verification in relation to an application for designation are met by the applicant. Third party verification may include advice for the benefit of the joint regulators from an expert approved by the joint regulators.

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<sup>1</sup> Determined by the joint regulators and approved by the Minister of Finance and the Minister of Commerce by notice in the *New Zealand Gazette* on 8 April 2010.

## 5. Designation Process

An Order in Council declaring that a settlement system is a designated settlement system may be made by the Governor-General on the advice of the Minister of Finance and the Minister of Commerce given in accordance with a joint recommendation of the Reserve Bank and the Financial Markets Authority.

There is no set timeframe for the joint regulators to consider an application. This allows for a constructive and possibly iterative process so the joint regulators can more fully understand the application, and the applicant can more fully understand the policy requirements, before any decision is made about whether to recommend that the settlement system be designated.

If the joint regulators refuse to recommend that a system be designated, they must give notice in writing to the applicant together with the reasons for the refusal.

If the joint regulators decide to recommend that a system be designated then the recommendation is made directly to the Minister of Commerce and the Minister of Finance.

The Minister of Commerce and the Minister of Finance may seek further advice from relevant departments in considering the joint regulators' recommendation, and there may be further dialogue between the departments and the joint regulators. There is no set timeframe for the Ministers to consider a recommendation. This allows the Ministers to seek whatever additional advice or information they require.

If the Minister of Commerce and the Minister of Finance agree with the recommendation that the settlement system be designated they will then seek approval from the Cabinet Legislative Committee to advise the Governor-General to make the Order in Council.

Parliamentary Counsel Office (PCO) will draft the Order in Council. The joint regulators will engage with PCO and may engage further with the applicant.

The Governor-General then makes the Order in Council on the advice of the Minister of Commerce and the Minister of Finance in accordance with the joint recommendation from the joint regulators.

The Order in Council is notified in the *New Zealand Gazette*.

The Order in Council will come into force on a date not earlier than 28 days after it has been notified in the *New Zealand Gazette* unless the 28 day rule is waived by the Cabinet Legislative Committee.