



Reserve Bank  
of New Zealand  
Te Pūtea Matua

# Reserve Bank's approach to section 65 authorisations for overseas banks.

Guidance Note

17 June 2021

## 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 ('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 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 place of business 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.<sup>1</sup> However, New Zealand is unusual in terms of the importance of naming-rights for its bank regulation and supervisory regime. That

---

<sup>1</sup> Australia is one example. See: <http://www.apra.gov.au/adi/Publications/Pages/Letter-to-ADIs-Operation-of-Foreign-Banks-in-Australia-23092013.aspx>

is, a financial institution may carry on banking business in New Zealand without being 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.

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 make an exception to this rule in cases where the retail business involved only relates to the provision of remittance services, and the risk of this exception are adequately managed (for example, through conditions on the eventual authorisation).
  7. The Reserve Bank may revoke a section 65(1) authorisation by written notice to the overseas bank (for individual authorisations) or by notice in the *Gazette* (for class authorisations). Prior to this step being taken, affected overseas banks would be notified of the Reserve Bank's intention to revoke the authorisation, and be given an opportunity to comment.
  8. Section 65 authorisations will only be granted to overseas banks with no place of business 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 place of business in New Zealand must first become a registered bank in New Zealand.
  9. 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.
  10. In assessing applications for section 65(1) authorisations for overseas banks, the Reserve Bank will consider the following factors (as appropriate):
    - 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 in New Zealand are solely in connection with products or services being offered by the bank overseas, or are substantially performed 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.
11. In any individual assessment, the Reserve Bank may consider any other factors it deems relevant.
  12. Alongside this guidance, the Reserve Bank will issue the Reserve Bank of New Zealand Act (Overseas Banks) Class Authorisation Notice 2019. This will provide overseas banks with no place of business in New Zealand authorisations to use restricted words in relation to certain types of business with wholesale customers.
  13. The Reserve Bank may issue additional class authorisations for overseas banks where necessary. 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

14. 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).
15. Reserve Bank policy is that the following conditions will be generally applied to any individual authorisation:
  - a) the overseas bank continues to have no place of business in New Zealand;
  - b) the overseas bank maintains an authorised agent in New Zealand for the purpose of accepting service of documents; and
  - c) the overseas bank submits to the Reserve Bank any information requested regarding its authorised activities.<sup>2</sup>
16. 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).
17. 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 may include (as applicable):
  - the number of New Zealand customers per authorised activity;
  - any financial statements that the overseas bank is required to prepare under Part 11 of the Companies Act 1993;

---

<sup>2</sup> These information request will not require information about a particular customer of client.

- 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.
18. Information requests will be made by notices issued under section 36 of the Act. The exact content of the information required under an individual exemption will be discussed with applicants. Where possible, the Reserve Bank will also carry out targeted consultation on the proposed information required under a class authorisation.
19. The Reserve Bank will also respond in a proportionate manner to any failure by an overseas bank to meet a condition of authorisation. Where the breach is minor and of a "one-off" nature the Reserve Bank may choose to not take further action. In the case of more serious or repeated breaches, the Reserve Bank may raise the matter with the overseas bank's home country regulator, or revoke the relevant authorisation.



### Part 3: Process for applying for authorisation

20. 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).
21. 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](mailto:admin.authorisations@rbnz.govt.nz) or mailed to:

Enforcement  
Supervision Department  
Reserve Bank of New Zealand  
PO Box 2498  
Wellington 6140  
New Zealand

22. 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.
23. 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.
24. The Reserve Bank intends to publish a register of authorised overseas banks on its website, as well as most details of authorisations (we may, for example, note the nature of the activities that have been authorised, but not the scope of these activities where the overseas bank indicates that this is commercially confidential).
25. 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.
26. 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

27. 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.
28. Any new applications after the date that this guidance comes into force will be treated as applications for authorisation, and will be considered in accordance with this guidance.
29. Non-objection letters that have been issued to overseas banks before the date this guidance comes into force will remain in place, and activities carried on by overseas banks under these letters can continue for the time being.
30. As noted above, alongside this guidance note the Reserve Bank will issue the Reserve Bank of New Zealand Act (Overseas Banks) Class Authorisation Notice 2019. Where an application for a non-objection letter has been made, but not yet responded to, by the date this class authorisation came into force, the Reserve Bank will consider whether the application has been superseded by this class authorisation. Where all or part of the application has not been superseded by this authorisation, the Reserve Bank will treat the application as an application for an individual authorisation.

## 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.

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 its home country. Please attach relevant documents to support this claim.

4. Name and contact details for the home country licensing authority.

5. Name and contact details for the home country 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:

- the nature and scale of the proposed activity in New Zealand (please provide both qualitative and quantitative information where available);
- a description of the type of customer that the proposed activity in New Zealand 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 in New Zealand (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. 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)

11. 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.)

12. Provide any further information that you think may be relevant to/support the application.

13. Please provide full contact details for the person who has authorised this application on behalf of the overseas bank.