



Reserve Bank
of New Zealand
Te Pūtea Matua

Review of Policy for Branches of Overseas Banks

Summary of Submissions, Third Consultation Paper –
Implementation Considerations

21 August 2024

Contents

1	Background	2
1.1	Consultation Process	2
2	Summary of Submissions	3
2.1	Choice of metrics for identifying large corporate and institutional clients	3
2.2	Calibration of metrics	4
2.3	Transitional arrangements	4
2.4	Other points raised	5
3	Summary of RBNZ responses	6
4	Next steps	7
5	Annex A: policy settings for overseas deposit takers	8

1 Background

Branches of overseas deposit takers are an important link between our economy and global financial markets. They often provide valued services to New Zealand businesses and the wider economy, and are an important segment of our regulated population of deposit takers.

We recognise that our policy towards branches has developed over time, resulting in inconsistent outcomes for branches. As a result, our policy on branches could be difficult to interpret, which could increase regulatory burden.

This Review of policy for branches of overseas banks (**Branch Review**) has sought to address these matters, while also taking into account the unique challenges and risks that branches present to us, as kaitiaki (guardians) of Aotearoa New Zealand's financial system.

In November 2023, we published the third consultation paper¹ that set out our proposals relating to implementation considerations for the Branch Review, including:

- that a large corporate and institutional customer be defined as such if it has either:
 - consolidated annual turnover of over NZ\$50 million; or
 - net assets of over NZ\$50 million.
- that the outcomes of the Branch Review will be implemented through either a Standard or conditions of licence issued under the Deposit Takers Act 2023 (**DTA**). Standards under the DTA are expected to commence in 2028.

1.1 Consultation Process

The third consultation paper in the Branch Review was published on 7 November 2023 and the consultation period closed on 5 December 2023. We received nine submissions to the third consultation, all from industry stakeholders, including:

- dual-registered banks – ANZ, Commonwealth Bank of Australia, China Construction Bank, Industrial and Commercial Bank of China, Rabobank, and Westpac;
- a standalone branch – Citibank;
- an overseas bank and its locally-incorporated subsidiary – Bank of New Zealand / National Australia Bank.

Redacted versions of these submissions can be found on our website.

We also engaged in bilateral discussions with industry stakeholders, both during and after the consultation period, to clarify points raised in their submissions.

This document provides a summary of the formal submissions received in response to our consultation, as well as our key decisions on the matters raised. This document is not intended to be an exhaustive summary and response to all points raised. We focus on the common themes and views raised in the submissions.

¹ The Branch Review third consultation paper can be found here: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/banks/overseas-branches/review-of-policy-for-branches-of-overseas-banks-consultation-paper-3.pdf>

2 Summary of Submissions

In the third consultation paper, we asked for feedback on three questions. Most of the submissions generally supported the proposals, with some amendments and clarifications sought.

The points we received the most feedback on were:

- the choice of metrics for large corporate and institutional customers, particularly whether the net assets metric would most appropriately meet the policy intent by capturing all institutional customers;
- the proposed transitional arrangements for implementing the decisions, particularly how the decisions in the Branch Review interact with other ongoing policy development work to implement the DTA.

We have responded to the feedback on the consultation questions in the following sections. Where relevant, we have made reference to the assessment principles of the Branch Review, which were included in the third consultation paper.

2.1 Choice of metrics for identifying large corporate and institutional clients

Most submissions supported the policy intent of introducing this requirement for dual-registered branches. Some submissions supported the proposed choice of metrics: that these customers should be defined by using a net assets or consolidated turnover metric. Several submissions queried whether the proposed choice of metrics was the most effective means of achieving the policy intent.

Total assets vs. net assets

The consultation paper proposed that the large corporate and institutional customer definition would include a net assets measure. This was consistent with the approach for identifying “large” investors in the Financial Markets Conduct Act 2013 (FMCA).

The intent of this measure is to ensure that the largest bank customers, who are generally multi-banked, can still access sophisticated products and services that dual-registered branches offer, while mitigating the risk of services that are critical to the New Zealand economy being “off-shored”.

Four submissions identified that there are some very large customers who access sophisticated services from dual-registered branches that would not meet a NZ\$50m net assets or consolidated turnover test, but would have much higher total assets. These customers can be characterised in the following two groups:

- Project Finance and/or Special Purpose Vehicles that have low net assets but large total assets, cited by all four respondents; and
- Funds Management entities that manage an amount of assets that aren’t recorded on their balance sheets as they belong to other parties, but otherwise meet the characteristics of large corporate and institutional customers, cited by two respondents.

Respondents proposed either changing the metric from net assets to total assets, or adding a third limb to the definition that would capture these two groups.

RBNZ response: in our view, project finance and funds management are both examples of customers that should be in scope for the definition. **We propose two changes to the definition: to revise one of the previously proposed limbs and to include an additional limb.**

First, revising the previously proposed limb from a net assets test to a total assets test. This is more transparent and practical to administer than adding a more specific third limb (Principles 5 and 6), and has a greater chance of capturing all large customers without unintentionally leaving some of them out of scope. This change aims to capture the first group of customers, those with low net assets but large total assets.

Second, we propose to add a third limb, clarifying that funds management entities can be tested based on total assets under management. This aims to capture the second group of customers, that would otherwise be out of scope using either a net or a total assets metric. While this may entail a slight loss of simplicity (Principle 5), it is still related to total assets and can be seen as establishing a different way to measure them for a specific industry, thus aiming to remain practical to administer (Principle 6). This also aims to recognise the role of branches in providing specialised services (Principle 3).

The exact wording of this requirement for dual-registered branches will be finalised through the DTA standards development process. More detail on this can be found in the Non-Core Standards Consultation Paper (see Chapter 9 on the Branch Standard).

2.2 Calibration of metrics

Respondents were supportive of the proposal that if the metrics used are net assets and consolidated turnover, then NZ\$50m is the appropriate calibration for both metrics to achieve the policy intent.

RBNZ response: given the changes noted in section 2.1 above, we still maintain that NZ\$50m is the appropriate calibration for the turnover metric. Given the addition of a funds management limb and the change from net to total assets, **we are proposing to increase the quantum of the total assets threshold to NZ\$75 million.** The intent is to capture a similar number of businesses as in the version used in the third consultation paper.

For the **total assets under management limb of the definition** (for funds management entities), **we are proposing a different threshold.** For more details on the rationale for this change, as well as the complete proposed definition, please refer to section 2.3 of the Branch Standard consultation paper.

We expect that this revised definition will capture the customers that respondents identified as out of scope, but that should meet the description of large corporate and institutional customers. This will mean that there are likely to be more customers eligible to be classified as large corporate and institutional customers than under the previous proposal. However, we judge that the calibration is still sufficiently tight for the threshold to achieve the policy intent, which is to mitigate the risk that services that are critical to the New Zealand economy are “off-shored”.

As with matters in section 2.1, the Branch Standard chapter of the non-core standards consultation paper is seeking further feedback on this point.

2.3 Transitional arrangements

Overall, respondents were supportive of aligning the implementation of the Branch Review decisions with the implementation of DTA Standards. This proposal addressed feedback received

in response to the second consultation paper that a period of three years from decisions to implementation was too short.

One respondent proposed that there should be an implementation period when existing branches continue to conduct business permitted under their existing conditions of registration, while also conducting business that will be newly allowed under the key decisions.

RBNZ response: The proposed transitional arrangements are appropriate for branches as a whole. We note that there may be entity-specific issues to address as the new policy is implemented. Any individual-entity matter like the one in the previous paragraph will be dealt with bilaterally through the licensing and authorisations processes under the DTA, with the goal of resolving all bespoke issues before the Branch Standard commences in 2028.

2.4 Other points raised

Sufficient separation in dual-registered banking groups

Two respondents requested further clarity on how the Reserve Bank intends to implement the policy decision that “dual registration of branches is permitted, provided that the relevant subsidiary and branch are sufficiently separate, and any identified risks are mitigated by specific conditions”.

RBNZ response: this policy objective is partially met by the restriction on the types of customers that dual-registered branches are able to do business with. In section 4.3 of the second consultation paper, we noted that under the Banking (Prudential Supervision) Act 1989 there is currently no prohibition on the responsible person signing a branch disclosure statement also having responsibilities for the subsidiary.

The Branch Review identified that this could potentially present a conflict of interest in the risk management of the two registered banks. We signalled an intention to conduct further policy work when developing standards under the DTA in this area. We are seeking feedback on this question in the Risk Management Standard chapter (refer to section 5 of that chapter) of the non-core standards consultation paper², which has been published alongside this document.

Definitions of retail and wholesale investors

One respondent requested further clarity on the decision to use the definition of “wholesale investors” from Clause 3(2) and 3(3), Schedule 1 of the FMCA, rather than section 459 of the DTA.

RBNZ response: the definition in section 459 of the DTA draws up section 49 of the Financial Service Providers (Registration and Dispute Resolution) Act 2009, which in turn draws on Clause 3(2) and 3(3), Schedule 1 of the FMCA. The key difference between these definitions is that investors can be designated as “wholesale” in relation to a wider range of financial services, including transactional banking. We judge that the DTA definition is therefore slightly more permissive than the FMCA definition in terms of who it considers to be “wholesale”.

As it would improve consistency of treatment within the DTA and not undermine the Depositor Compensation Scheme (DCS), we believe that there could be merit in making this change. We are seeking feedback on this question in the Branch Standard chapter of the non-core standards consultation paper, which has been published alongside this document.

² <http://consultations.rbnz.govt.nz>

Application of large corporate and institutional customer threshold

One respondent noted that applying the large corporate and institutional customer threshold to all overseas banks operating in New Zealand (whether as a standalone branch, dual-registered branch or acting under the Class Authorisation Notice) would better meet the assessment principle of supporting a level playing field for overseas banks (Principle 4).

RBNZ response: this is an instance where there is some degree of trade-off between the assessment principles for the Branch Review in reaching a decision.

The proposal under discussion is to limit all overseas banks to only conducting business with large corporate and institutional customers. This could arguably better meet Principle 4 than the proposal in the consultation paper. However, it would be less proportionate to the risks that these two other types of deposit takers present to financial stability (Principle 1). It would also not as effectively recognise their role in the provision of financial services (Principle 3).

Different operating models serve different types of customers and are consequently subject to different prudential requirements (see Annex A of this document for a summary of these requirements under each operating model for overseas deposit takers). We note that while different thresholds apply to standalone and dual-registered branches, an overseas deposit taker that operates both a branch and a subsidiary in New Zealand will still be able to do business with a wider range of customers than a standalone branch.

The policy decision has been identified as the option that most effectively supports the DTA's main purpose (section 3(1) of the DTA) as well as the additional purpose in section 3(2)(d) of the DTA, and meets the assessment principles on an overall basis. Refer to section 4.3 of the Branch Review's Regulatory Impact Statement³ for a detailed analysis of this point.

3 Summary of RBNZ responses

In summary, the key decisions taken in response to this consultation are to:

- implement the Branch Review decisions through the DTA Standards process and to issue a further consultation paper as part of the DTA non-core standards;
- consult on a revised version of the large corporate and institutional client definition through the non-core standards consultation paper (see Branch Standard chapter);
- consult on the definition of "wholesale clients" through the non-core standards consultation paper (see Branch Standard chapter); and
- provide further clarity on what we mean by "sufficient separation" within dual-registered groups through the non-core standards consultation paper (see section 5 of the Risk Management Standard chapter).

³ See the Regulatory Impact Statement on our website: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/banks/overseas-branches/review-of-policy-for-branches-of-overseas-banks-ris.pdf>

4 Next steps

Thank you to everyone who responded to the third consultation paper. The full list of substantive submissions can be viewed on our website.

Alongside this document, we have published a consultation paper on the Non-core Standards under the DTA. That consultation includes policy matters relating to branches, both in the Branch Standard chapter and in other chapters. We welcome your continued engagement through this process.

5 Annex A: policy settings under the four operating models for overseas deposit takers

The policy settings that result from the key decisions in the Branch Review will mean an overall more clear, consistent and coherent framework for overseas deposit takers operating in New Zealand. There will be four arrangements that an overseas deposit taker will be able to operate under:

1. not licensed by the RBNZ;
2. only operating a branch in New Zealand;
3. only operating a subsidiary in New Zealand; or
4. operating both a subsidiary and a branch in New Zealand (“dual operation”, or previously “dual registration”).

These four arrangements will be associated with a level of prudential requirements and safeguards that is proportionate to the scale of business that the deposit taker is carrying on in New Zealand and the types of customers with which it is doing business. The requirements, size constraints and customer types for each arrangement are summarised in Figure 1 below. The figure also includes references to the proposed requirements in the core and non-core standards consultation papers, at a high-level.

Figure 1: Policy settings under the four operating models for overseas deposit takers

Operating Model	Allowable customer profiles	Maximum balance sheet size	Prudential requirements
Authorised by RBNZ to operate without a licence <small>Note: based on current restricted words regime and subject to further review through DTA implementation.</small>	No solicitation of NZ customers	Monitored by regular reporting, no hard threshold	No place of business in NZ
Branch only <small>Also referred to as 'a standalone branch'</small>	Wholesale clients only (DTA s459 definition, including turnover or assets >\$5m)	NZ\$15bn in total assets	No NZ capital or quantitative liquidity requirements, some Standards may apply (e.g. disclosure, governance)
Locally-incorporated subsidiary only	All customer profiles	Unlimited	Varying according to total assets, as described in the Proportionality Framework
Dual operation Branch and locally-incorporated subsidiary			
Locally-incorporated subsidiary	All customer profiles	Unlimited	Varying according to total assets, as described in the Proportionality Framework
Dual-operating branch	Only large corporate and institutional clients: turnover > \$50m; or total assets > \$75m; or AUM > \$1bn (for funds management)	NZ\$15bn in total assets	No NZ capital or quantitative liquidity requirements, additional risk mitigants (e.g. 1:1 ratio), some Standards may apply (e.g., disclosure, governance)

Note: The broader the customer base and/or greater flexibility = more prudential requirements and safeguards.