

DRAFT FOR CONSULTATION

Deposit Takers Bill

Government Bill

Explanatory note

General policy statement

[To come]

Departmental disclosure statement

The Reserve Bank of New Zealand is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [to come] (if it has been provided for publication).

Regulatory impact assessment

The Reserve Bank of New Zealand produced a regulatory impact assessment in April 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.treasury.govt.nz/system/files/2021-04/rbnz-dtb-RIA-4444132.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

[To come]

Hon Grant Robertson

Deposit Takers Bill

Government Bill

Contents

	Page
1 Title	18
2 Commencement	18
Part 1	
Preliminary provisions	
3 Purposes	19
4 Principles to be taken into account under this Act	19
5 Overview	20
6 Interpretation	22
7 Meaning of associated person and holding entity	27
8 Transitional, savings, and related provisions	27
9 Act binds the Crown	28
Part 2	
Licensing of deposit takers	
Subpart 1—Key provisions	
10 Deposit taker must be licensed	28
11 Offence for deposit taker to carry on business without licence	28
12 No holding out as licensed	28
13 Offence for holding out	28
Subpart 2—Issue of licences	
14 Bank may issue licence	28
15 Application for licence	29
16 When licence must be issued	29
17 Additional criteria for overseas applicants	30
18 Overseas requirements may be treated as appropriate	30

Deposit Takers Bill

19	Consultation requirements	30
20	Notice of decision	31
21	Bank must keep register of licensed deposit takers	31
22	Form and content of register	31
	Subpart 3—Conditions of licences	
23	Bank may impose conditions on licence	31
24	Bank may modify conditions of licence	32
	Subpart 4—Fit and proper requirements	
25	Licensed deposit taker must obtain Bank’s approval before new director or senior manager is appointed	33
26	Offence for appointing new director or senior manager without approval	33
27	Bank’s decision on approval	33
28	Bank may suspend director or senior manager if approval not obtained	33
29	Overseas licensed deposit taker must notify Bank if new director or senior manager is appointed	34
30	Bank may require further fit and proper certificate	34
31	Deposit taker’s duty on becoming aware of fit and proper concerns	34
32	Offence for failing to disclose fit and proper concerns	35
33	Power to remove directors and senior managers	35
34	Bank may direct that person may not be reappointed	35
35	Offences to contravene direction	35
36	Further provisions about power to remove	36
37	How power to remove is exercised	36
	Subpart 5—Bank’s approval required for certain changes	
	<i>Change of control</i>	
38	Person who obtains control over licensed deposit taker must obtain Bank’s approval	36
	<i>Significant transactions</i>	
39	Licensed deposit taker must obtain Bank’s approval before entering into significant transaction	37
	<i>Amalgamation</i>	
40	Licensed deposit taker must obtain Bank’s approval before amalgamation	37
	<i>Consequences of failing to get approval</i>	
41	Offence for failing to get approval	38
42	Failure to get approval does not invalidate proposed change	38
	<i>Process for approval</i>	
43	Meaning of proposed change	38

Deposit Takers Bill

44	Request for approval	38
45	Report on proposal	38
46	Bank must consider whether it would still be satisfied of licensing matters	38
47	Bank's decision on approval	39
48	Offence for contravening condition of approval	39
49	Requirement for approval is in addition to other requirements	39
Subpart 6—Cancellation		
50	Cancellation of licence	39
51	Process for cancelling licence	40
52	Notice of cancellation	40
Subpart 7—Appeals		
53	Appeals against licensing and fit and proper decisions	40
54	Appeals against other decisions of Bank on questions of law only	41
55	Appeal does not operate as stay	41
Part 3		
Regulation of deposit takers		
Subpart 1—Credit rating		
56	Licensed deposit taker must have current credit rating	41
57	Offence for failing to have current credit rating	41
58	Bank may approve rating agencies	41
59	List of approved rating agencies	42
60	Bank may review approval	42
61	Licensed deposit taker must notify Bank of change in rating	42
62	Licensed deposit taker must notify Bank of credit watch warning	42
63	Disclosure of credit rating on licensed deposit taker's Internet site	43
64	Other advertising of credit ratings	43
65	Licensed deposit taker must not disclose or advertise credit ratings from non-approved agencies	44
66	Licensed deposit taker must give public notice of downgrade	44
Subpart 2—Standards		
67	Bank may issue standards	45
68	Licensed deposit taker must comply with applicable standards	45
69	Application of standards	45
<i>Procedural matters</i>		
70	Procedure for issuing standards	46
71	When procedural requirements do not apply	46
<i>Subject matter of standards</i>		
72	Governance, incorporation structure, and ownership	46
73	Capital, liquidity, security interests, and credit ratings	47
74	Bail-in standards	48

Deposit Takers Bill

75	Fit and proper persons	48
76	Lending and other exposures	49
77	Classes of lending must be prescribed by regulations	50
78	Application of lending standards may extend to non-deposit-taking lenders	50
79	Exposures to related parties	50
80	Risk management, business continuity planning, and problem assets	51
81	Depositor compensation	52
82	Covered bonds and securitisation	52
83	Disclosure of information	53
84	Contingency and recovery plans	54
85	Other matters	54
	<i>Bank's approval may be required</i>	
86	Standards may require Bank's approval	55
	<i>Conditions</i>	
87	Standards may provide for matters to be specified by conditions	56
	Subpart 3—Directors' due diligence duty	
88	Duty of directors of licensed deposit takers	56
89	Meaning of due diligence	57
90	Prohibition on indemnities or insurance	57
91	Permitted indemnities for certain liabilities or costs	57
92	Permitted insurance for certain liability or costs	58
93	Details of indemnity or insurance must be entered in interests register	58
	Part 4	
	Supervision of deposit takers	
	<i>Bank to undertake prudential supervision</i>	
94	Prudential supervision	58
	Subpart 1—Bank's information-gathering power	
95	Bank may require person to supply information for purposes of Act	59
96	Infringement offence for complete failure to give information or produce documents within required time frame	59
97	Offence for failing to supply information	60
98	Person required to give information has same privileges as witnesses in court	60
99	Bank may require report relating to licensed deposit taker or associated person	60
100	Associated person must supply information	60
101	Bank may require report to be published	61

Deposit Takers Bill

102	Offences for failing to give or publish report	61
103	Requirement that information be audited or reviewed	61
104	Offences for failing to obtain audit or review	61
105	Disclosure of information to Bank by auditors	61
106	Auditor to inform of intention to disclose	62
107	Protection of auditor	62
108	Admissibility of information	62
Subpart 2—On-site inspection		
109	Purpose	62
110	Bank may conduct on-site inspection	63
111	Person may be required to answer questions or give information	63
112	Person required to answer questions or give information has same privileges as witnesses in court	63
113	Offence relating to on-site inspection	63
Subpart 3—Reporting duty		
114	Licensed deposit taker must monitor compliance	64
115	Licensed deposit taker must report contraventions	64
116	Offences for failing to monitor compliance and report contraventions	64
117	Restriction on use of report	64
Subpart 4—Remedial notices and plans		
118	Bank may require licensed deposit taker to take action in relation to contravention	64
119	Bank’s consideration of remedial plan	65
120	Bank may require amendment of remedial plan	65
121	Remedial plan may also be amended with Bank’s approval	65
122	Licensed deposit taker must comply with remedial plan	66
123	Other provisions relating to remedial notices and plans	66
124	Offence for contravention of remedial notice, failure to give amended remedial plan, or failure to take steps to comply with remedial plan	66
Subpart 5—Investigations		
125	Bank may appoint investigator	66
126	Power to obtain information	66
127	Power to enter and search place	67
128	Offences in relation to investigations	67
Subpart 6—Confidentiality orders		
129	Bank may make confidentiality order	68
130	Disclosure with Bank’s consent	68
131	Offence for contravention of confidentiality order	69

Deposit Takers Bill

	Subpart 7—Power to require warning to be disclosed	
132	Bank may require its warning to be disclosed	69
133	Procedural matters relating to order	70
134	Other provisions relating to order	70
135	Bank must give notice of orders	70
136	Offence of failing to comply with order	71
	Subpart 8—Access to information by overseas supervisor	
137	Access to information by overseas supervisor	71
138	Bank must give notice of authorisation	71
139	Authorisation may relate to particular customer or client	71
140	Restriction on authorisation	72
141	Duties of licensed deposit taker	72
142	Offence for contravening duties	72
	Subpart 9—Miscellaneous	
143	Effect of final decision that exercise of powers under section 95 or 126 unlawful	72

Part 5 Enforcement

	Subpart 1—Power to accept undertakings	
144	Bank may accept voluntary undertaking	73
145	What undertaking may include	73
146	Consequences of accepting undertaking	73
147	Undertakings that include payment of money	73
148	Licensed deposit taker or other person may withdraw or amend undertaking	74
149	Enforcement of undertakings	74
150	Court must take into account certain matters	74
	Subpart 2—Pecuniary penalty	
	<i>Court may make pecuniary penalty order</i>	
151	When court may make pecuniary penalty orders	74
	<i>Amount of pecuniary penalty</i>	
152	Maximum amount of pecuniary penalty	75
153	Considerations for court	75
	<i>Defences</i>	
154	Defences for person that contravenes prudential obligation	76
155	Defence for person that is involved in contravention	76
	<i>Bank's costs</i>	
156	Court must order that recovery from pecuniary penalty be applied to Bank's actual costs	77

Deposit Takers Bill

	<i>Procedural rules</i>	
157	Rules of civil procedure and civil standard of proof apply	77
158	Limitation	77
	<i>Relationship between proceedings and orders</i>	
159	Only 1 pecuniary penalty order may be made for same conduct	77
160	No pecuniary penalty and criminal penalty for same conduct	77
	Subpart 3—Infringement offences	
161	Infringement offences	77
162	When infringement notice may be issued	78
163	Revocation of infringement notice before payment made	78
164	What infringement notice must contain	78
165	How infringement notice may be served	79
166	Payment of infringement fees	79
167	Reminder notices	79
	Subpart 4—False declarations and representations	
168	False or misleading declarations and representations	79
169	Offence for making false or misleading declaration or representation	80
170	Liability of directors if licensed deposit taker or associated person commits offence	80
	Subpart 5—Ban ordered by District Court	
171	Power to ban certain persons from participating in deposit taking business	80
172	Type of order	81
173	Other provisions relating to order	81
174	Offence for contravening banning order	81
175	Effect of appeal	82
176	Appeal to High Court	82
	Subpart 6—Miscellaneous	
	<i>Attribution of liability</i>	
177	State of mind of directors, employees, or agents attributed to body corporate or other principal	82
178	Conduct of directors, employees, or agents attributed to body corporate or other principal	82
	<i>Miscellaneous</i>	
179	General defence for offences	83
180	Time for filing charging document for certain offences	83
181	Jurisdiction of courts in New Zealand	83
182	Orders to secure compliance	84
183	General provisions as to court's orders	84

Part 6
Depositor compensation scheme

Subpart 1—Preliminary provisions

184	Additional purpose of this Part	84
185	Interpretation in this Part	84
186	Meaning of protected deposit and related terms	86
187	Meaning of specified event	87
188	When Bank may issue specified event notice	87
189	Bank's function under this Part	88

Subpart 2—Depositor Compensation Fund

190	Depositor Compensation Fund established	88
191	What fund consists of	88
192	Payments out of fund	89
193	Bank may apportion expenditure	89
194	Investments	90

Subpart 3—Entitlement to compensation

Entitlement rules

195	General entitlement rule	90
196	Calculation of entitlement	91
197	Protected deposit held by or on behalf of 2 or more persons jointly	91
198	Protected deposit held by or on behalf of 2 or more persons other than jointly	92
199	District Court may make order about shares	93
200	Partnerships	93
201	Bare trustees and providers of relevant arrangement not entitled to compensation	93
202	Entitlement rule for deposits held on trust	94
203	Protected deposit held under different trusts	95
204	Trustee that is ineligible in own personal capacity does not prevent compensation being payable in relation to trust	95

Entitlements subject to regulations

205	Regulations may provide for calculation of amount of person's protected deposits or share of protected deposits	95
206	Regulations may impose conditions	96
207	Bank not required to pay compensation if cannot act with reasonable certainty	96

Other matters relating to calculation of entitlement

208	Liabilities owed to licensed deposit taker must be disregarded	97
209	Bank may rely on licensed deposit taker's records and information from eligible investors and other persons	97
210	Bank may determine interest accrued	97

Deposit Takers Bill

	<i>Payment of entitlements</i>	
211	How Bank must pay entitlements	98
212	Bank may establish account on behalf of eligible investor	98
213	Restrictions on entitlement to compensation under scheme	98
214	Recovery of compensation paid in excess or in error under scheme	98
	Subpart 4—Bank or subsidiary assumes eligible investor’s rights	
215	Bank’s right of subrogation	99
216	Bank may apportion compensation to determine respective rights and remedies	99
217	Subpart does not limit or affect other rights or remedies	100
	Subpart 5—Use of fund to support resolution	
218	Bank may use fund to support resolution	100
219	Bank must calculate maximum amount	100
220	Maximum amount based on net amount of compensation payable in hypothetical liquidation	101
221	Use of fund to support resolution does not affect eligible investor’s entitlement to compensation	101
222	Bank may apply fund money in manner it thinks fit	101
	<i>Independent review</i>	
223	Review of assessment	102
	Subpart 6—Levies for scheme	
224	Licensed deposit takers must pay levy	102
225	Interest on unpaid levy	103
226	Levy regulations	103
227	Minister must have regard to levy principles	104
228	Minister must also have regard to statement of funding approach and Bank’s advice	104
229	Bank must give advice about levy regulations	104
230	Process for developing Bank’s advice	104
231	Bank must publish levy advice	105
232	Effect of failure to comply	105
	Subpart 7—Statement of funding approach	
233	Minister must publish statement of funding approach	105
234	Minister must consult Bank and seek views of public	105
235	Contents of statement	105
	Subpart 8—Deficiency in fund	
236	Deficiency in fund	106
	Subpart 9—Accountability	
237	Financial statements of fund	107
238	Statement of responsibility	107

Deposit Takers Bill

239	Auditor-General is auditor of fund	107
240	Audit of financial statements	107
241	Board must ensure that proper accounting records are kept	108
	Subpart 10—Miscellaneous provisions	
	<i>Additional liquidation duties and powers</i>	
242	Additional duties of liquidator of licensed deposit taker	108
243	Additional powers of liquidator of licensed deposit taker	108
	<i>No holding out that product is protected deposit</i>	
244	No holding out that product is protected deposit	108
	Part 7	
	Crisis management and resolution	
	Subpart 1—Preliminary provisions	
245	Additional purposes of Part	109
	Subpart 2—Planning and statement of approach	
246	Bank must prepare and maintain orderly resolution plan for each licensed deposit taker	110
247	Bank must publish statement of approach to resolution	110
248	Content of statement of approach	110
249	Review of statement of approach	110
250	Failure to comply with subpart does not effect validity of Bank’s actions	111
	Subpart 3—Bank may give directions, approve sales, and replace directors	
	<i>Bank may give directions</i>	
251	Bank may give directions to licensed deposit taker	111
252	Bank may give directions to associated person	112
253	Scope of directions	112
254	Direction must be in writing and state grounds	113
	<i>Bank may approve sale or disposition</i>	
255	Bank may approve sale or disposition	113
	<i>Bank may remove, replace, or appoint director</i>	
256	Power to remove, replace, or appoint director of licensed deposit taker	114
257	How Bank exercises power to remove, replace, or appoint director	114
	<i>Disclosure of direction or notice</i>	
258	Prohibition on disclosing or publishing direction or notice	114
259	Offence for contravening prohibition	115

Deposit Takers Bill

	Subpart 4—Resolution of licensed deposit takers and associated persons	
260	Resolution of licensed deposit takers and associated persons	115
261	Resolution of subsidiaries	116
262	Resolution for overseas persons	116
263	Date on which, and time at which, resolution starts	116
264	Questions about whether transactions are before or after resolution	116
265	Limitation on application of provisions to covered bond SPV	116
266	Grounds on which licensed deposit taker may be declared to be in resolution	117
267	Grounds on which associated person may be declared to be in resolution	118
268	End of resolution	118
269	Application of resolution provisions to other persons in resolution	119
	Subpart 5—Moratorium and restriction on resolution trigger	
270	Moratorium	119
271	Period of moratorium	119
272	Bank must publish notice on Internet site	120
273	Restriction on resolution trigger	120
274	Person may commence or continue proceeding with leave	121
275	Bank may waive application of moratorium and restriction on resolution trigger	121
276	Moratorium and restriction on resolution trigger do not affect existence or priority of security interest	121
277	Moratorium does not limit or prevent obligations incurred or rights granted after deposit taker enters resolution	121
278	Moratorium and restriction on resolution trigger do not limit or affect certain rights under netting agreement or rights under rules of designated FMI	121
279	Moratorium and restriction on resolution trigger do not limit or prevent certain things in relation to derivatives after stay	123
280	Bank may reduce or extend stay	124
281	Matters Bank must be satisfied of when reducing or extending stay	124
282	Publication of notice	124
	Subpart 6—Conduct of resolution	
	<i>Management and control of deposit taker</i>	
283	Management of licensed deposit taker vests in Bank	125
284	Directors, managers, and other persons may act only with Bank’s permission	125
	<i>Bank’s general powers</i>	
285	Bank’s general powers	125

Deposit Takers Bill

286	Bank has powers of deposit taker and of its shareholders, members, and board	125
287	Bank may carry on business of licensed deposit taker	126
288	Bank may pay creditors and compromise claims	126
289	Bank's powers under regulations	126
	<i>Bank's investigation powers</i>	
290	Bank's investigation powers	126
	<i>Bank may form body corporate to acquire New Zealand business</i>	
291	Bank may form body corporate to acquire New Zealand business	127
292	Vesting does not affect deposit taker's obligations or place it in breach	127
293	Body corporate is also subject to resolution	127
294	Vesting of property or rights subject to security interest	128
295	Proof of vesting	128
	<i>Bank may dispose of business undertaking or property, rights, or liabilities</i>	
296	Bank's disposal power	128
297	Bank may dispose of business undertaking etc to bridge institution or asset management vehicle	129
298	Body corporate is also subject to resolution	129
299	Consents not required under other legislation or agreement, and transactions do not constitute breach	130
300	Bank may sell, transfer, or dispose of property despite security interest	130
301	When proceeds of sale of licensed deposit taker's property must be paid to holder of security interest	130
302	When property continues to be subject to security interest	130
303	When proceeds of sale of shares or property of new body corporate must be paid to holder of security interest	131
304	Kind of security interest referred to in various sections	131
305	Proof of transactions	132
306	Provisions applying where liabilities included in sale	133
	<i>Bank's power to issue deposit taker's financial products</i>	
307	Bank may offer and issue deposit taker's financial products	133
	<i>Bank may suspend payment of money owing</i>	
308	Bank may suspend payment of money owing	133
309	Bank may not suspend or cancel obligation incurred after deposit taker enters resolution	134
310	Bank may not suspend payment of amount included in netted balance	134

Deposit Takers Bill

	<i>Bank may disclaim property</i>	
311	Power to disclaim onerous property	134
	<i>Property may not be removed from New Zealand</i>	
312	Prohibition against removing property	135
	<i>Bank may trace property</i>	
313	Power to trace property improperly disposed of	135
314	Order may not deprive good faith purchaser for value	135
	<i>High Court may give directions</i>	
315	High Court may give directions	136
	<i>Relationship between resolution and other legislation and processes</i>	
316	Application of certain provisions of Companies Act 1993	136
317	Application of other Acts	136
318	Bank and other persons are not directors under any legislation	137
319	Prior insolvency process must cease	137
320	Continuation of resolution if restored	137
	<i>Auditors</i>	
321	Appointment of auditors	138
322	Existing auditor ceases to hold office	138
323	Bank may remove auditor from office	138
324	Auditor's fees	138
325	Auditor's rights	138
	<i>Miscellaneous provisions</i>	
326	Expenses of resolution	139
327	Offence to destroy, alter, or conceal records	139
328	Bank may change balance date	140
329	Annual report on conduct of resolution	140
330	Rules relating to subsidiaries do not apply	140
	Subpart 7—Minister may give directions	
331	When subpart applies	140
332	Minister may direct Bank relating to exercise of resolution power	141
333	Procedural requirements	141
	Subpart 8—Resolution manager	
334	Bank may appoint resolution manager	142
335	Delegation of functions, powers, and duties	142
336	Appointment notice must be published	142
337	Resolution manager to comply with directions of Bank	142
338	Resolution manager must consult and have regard to Bank advice	143
339	Bank may terminate appointment of resolution manager	143
340	Resolution manager may resign	143

Deposit Takers Bill

341	Resolution manager continues in office	143
342	Licensed deposit taker continues to be in resolution	144
	Subpart 9—No creditor or shareholder worse off	
343	Interpretation in this subpart	144
344	Eligibility for compensation under this subpart	145
	<i>Valuer's role</i>	
345	Minister must appoint valuer	145
346	Functions of valuer	145
347	Valuer must act in manner prescribed by regulations	145
348	Valuer must prepare list of pre-resolution creditors and shareholders	146
	<i>How valuer must determine compensation</i>	
349	Valuer must determine compensation by reference to difference between liquidation value and resolution value	146
350	Liquidation value	147
351	Resolution value	147
352	Discount rate	147
	<i>Valuer's report</i>	
353	Valuer's draft report	148
354	Valuer must give draft report to Minister and Bank	148
355	Minister or Bank may require valuer to reconsider	148
356	Valuer must finalise and publish report	148
	<i>Compensation notice and payments</i>	
357	Valuer must send compensation notice	149
358	Bank must make available public information if compensation notice cannot be sent	149
359	Bank must manage and administer payments of compensation	150
360	Bank must pay in accordance with regulations	150
361	Crown must provide money necessary to pay compensation	150
362	Transfer of entitlement by assignment or operation of law	150
	<i>Valuer's information-gathering power</i>	
363	Valuer may require person to supply information for purposes of subpart	151
364	Offence for failing to supply information	152
365	Person required to give information has same privileges as witnesses in court	152
366	Use of information and confidentiality	152
	<i>Appeals</i>	
367	Appeal against valuer's decision	152
368	Time for bringing appeal	153

Deposit Takers Bill

369	No right of appeal from High Court's decision	153
370	No limit on judicial review	153
	<i>Miscellaneous provisions</i>	
371	Who may be appointed as valuer	153
372	Application of subpart to joint valuers	155
373	Appointment notice must be published	155
374	Minister may terminate appointment of valuer	155
375	Valuer may resign	155
376	Valuer continues in office	156
377	Valuer's costs, charges, and expenses	156
378	Valuer's duties in relation to records	156
	Subpart 10—Covered bonds	
	<i>Interpretation relating to covered bonds</i>	
379	Interpretation	156
380	Meaning of covered bond SPV	157
381	Meaning of issuer	157
	<i>Main duties of issuer</i>	
382	Issuer may issue covered bond only under registered programme	158
	<i>Registration of covered bond programmes</i>	
383	Register of registered covered bond programmes	158
384	When programme must remain or be removed from register	159
385	Other matters relating to registration	159
386	Requirement, and application, for registration of covered bond programme	159
387	Determination of application for registration of covered bond programme	159
388	Bank must approve or decline application	160
389	Bank must give notice of approval	161
390	Bank must give notice of proposal to decline application	161
391	Bank and issuer may agree to modify time limits	161
	<i>Ongoing duties of issuer</i>	
392	Requirements relating to registered covered bond programmes	161
393	Bank may require corrective action	162
394	Offence to fail to take corrective action	162
	<i>Cover pool monitor</i>	
395	Cover pool monitor	163
396	Cover pool monitor must perform certain services under contract	163
	<i>Resolution or statutory management, etc., of issuer</i>	
397	Limitation on application of resolution, statutory management, etc., provisions to covered bond SPV	164

Deposit Takers Bill

	Subpart 11—Bank may apply to put deposit takers and associated persons into liquidation	
398	Liquidation of licensed deposit takers and associated persons	165
399	When High Court may appoint liquidator	165
	Subpart 12—Miscellaneous	
400	Licensed deposit taker not entitled to be informed about exercise of powers under this Part	165
	Part 8	
	Miscellaneous	
	Subpart 1—Use of words bank, banker, and banking	
	<i>Limit on use of restricted words in name or title</i>	
401	Limit on use of restricted words in name or title	166
402	Offence for contravening limit on use of restricted words	166
403	When restriction does not apply	166
404	Bank may authorise particular persons to use restricted words in name or title	167
405	Bank may authorise class of persons to use restricted words in name or title	167
406	Authorisation extends to Registrar of Companies, etc	167
407	Bank's policies for giving authorisation	167
408	Conditions	168
409	Application of Companies Act 1993	168
	<i>Limit on use of restricted words in advertisement</i>	
410	Limit on use of restricted words in advertisement	168
411	Offence for contravening advertising limit	169
	<i>Bank may require change of name, etc</i>	
412	Power to require change of name, etc	169
413	Offence for contravening requirement to change name, etc	169
	Subpart 2—Trans-Tasman co-operation	
414	Interpretation in this subpart	169
415	Trans-Tasman co-operation	170
416	Bank's duty to consult	170
417	Failure to comply with subpart does not affect validity of Bank's actions	170
	Subpart 3—Confidentiality	
418	Disclosure of information by Bank	170
419	Relationship with other Acts	171
420	Offence for unauthorised disclosure	171
421	Conditions relating to disclosure of information	172
422	Restrictions on further disclosure of information	172

Deposit Takers Bill

423	Offence for unauthorised disclosure or use	172
424	Subpart does not limit Privacy Act 2020	172
	Subpart 4—Bank’s power to specify how things are done	
425	When subpart applies	173
426	Bank may require particular persons to comply with specified requirements	173
427	Bank may require class of persons to comply with requirements	173
428	Requirements that may be specified	173
429	Bank may also require further information	173
430	Bank may refuse to act if requirements not complied with	173
	Subpart 5—Regulations	
431	General regulations	174
432	Regulations relating to depositor compensation scheme	175
433	Regulations prescribing classes of persons that are not eligible investors	175
434	Regulations prescribing requirements for protected deposits and declaring classes of debt securities not to be protected deposits	176
435	Regulations providing for temporary high balance limits	176
436	Bank must give advice about regulations for temporary high balance limits	177
437	Regulations providing for calculation of amount of person’s protected deposits or share of protected deposits	177
	Subpart 6—Exemptions	
438	Bank may grant exemptions from credit rating requirements	177
439	Restriction on Bank’s exemption power	177
	Subpart 7—Other miscellaneous provisions	
440	How notices, directions, and other documents must be given	178
441	When certain notices, directions, or documents treated as given	178
442	Meaning of deposit takers	179

Part 9

Repeals and amendments to other Acts

Repeals

443	Repeals	179
	<i>Amendments to Reserve Bank of New Zealand Act 2021</i>	
444	Principal Act	179
445	Section 10 amended (Bank’s functions)	179
446	Section 74 (Ability to delegate)	179
447	New section 190A and cross-heading inserted	179

<i>Qualified privilege protection</i>			
	190A	Bank's warnings, reports, guidelines, or comments protected by qualified privilege	180
448		Section 240 amended (Form and content of annual report)	180
<i>Amendments to Financial Markets Conduct Act 2013</i>			
449		Principal Act	180
450		Section 6 amended (Interpretation)	180
451		Section 22 amended (False or misleading representations)	180
452		Schedule 1 amended	180
<i>Exclusion for licensed deposit takers</i>			
	21	Offers of prescribed financial products or debt securities by licensed deposit takers	180
<i>Insurance (Prudential Supervision) Act 2010</i>			
453		Principal Act	181
454		Meaning of carrying on insurance business in New Zealand	181
<i>Consequential amendments</i>			
455		Consequential amendments	181
Schedule 1			182
Transitional, savings, and related provisions			
Schedule 2			183
Deposit takers			
Schedule 3			188
Consequential amendments			

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Deposit Takers Act **2022**.

2 Commencement

- (1) This Act commences on a date or dates set by Order in Council.
- (2) Any part of the Act that has not commenced by the fourth anniversary of Royal assent commences then.
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Part 1

Preliminary provisions

3 Purposes

- (1) The main purpose of this Act is to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system.
- (2) To that end, this Act has the following additional purposes:
 - (a) to promote the safety and soundness of each deposit taker:
 - (b) to promote public confidence in the financial system:
 - (c) to avoid or mitigate the adverse effects of the following risks:
 - (i) risks to the stability of the financial system:
 - (ii) risks from the financial system that may damage the broader economy.

4 Principles to be taken into account under this Act

In achieving the purposes of this Act, the Bank must take into account the following principles that are relevant to the performance or exercise of the functions, powers, and duties conferred or imposed on the Bank:

- (a) the desirability of—
 - (i) taking a proportionate approach to regulation and supervision; and
 - (ii) consistency in the treatment of similar institutions (while recognising that the deposit taking sector comprises a diversity of institutions):
- (b) the need to maintain competition within the deposit taking sector:
- (c) the need to avoid unnecessary compliance costs:
- (d) the desirability of maintaining awareness of, and responding to,—
 - (i) the practices of overseas supervisors that exercise functions in relation to any licensed deposit taker or any holding company of any licensed deposit taker; and
 - (ii) guidance or standards of international organisations:
- (e) the desirability of ensuring that the risks referred to in **section 3(2)(c)** are managed (including long-term risks to the stability of the financial system):
- (f) the desirability of sound governance of deposit takers:
- (g) the desirability of deposit takers effectively managing their capital, liquidity, and risk:

- (h) the desirability of depositors having access to timely, accurate, and understandable information to assist them to make decisions relating to debt securities issued by deposit takers.

5 Overview

In this Act,—

Preliminary

- (a) this Part provides for preliminary matters, including the purposes of this Act and principles that the Bank must take into account:

Licensing of banks and other deposit takers

- (b) **Part 2**—

- (i) requires banks and other persons in the business of borrowing and lending money (**deposit takers**) to hold a licence under this Act:
- (ii) provides for when the Bank must issue a licence:
- (iii) provides for licence conditions:
- (iv) requires directors and senior managers of deposit takers to be fit and proper persons:
- (v) requires the Bank's approval for certain important changes (for example, a change in control of a bank):
- (vi) provides for the cancellation of licences and appeals:

Regulation of deposit takers

- (c) **Part 3**—

- (i) requires a deposit taker to have a current credit rating:
- (ii) requires a deposit taker to comply with prudential standards (for example, to hold and maintain a minimum level of capital):
- (iii) requires directors of a deposit taker to exercise due diligence to ensure that the deposit taker complies with its prudential obligations:

Supervision of deposit takers

- (d) **Part 4**—

- (i) requires the Bank to prudentially supervise deposit takers:
- (ii) provides for information-gathering, on-site inspection, and investigation powers:
- (iii) requires a deposit taker to monitor its compliance with the prudential obligations and to report a failure to comply to the Bank:
- (iv) allows the Bank to require a deposit taker to take action to address a failure to comply:
- (v) allows the Bank to require a deposit taker to disclose warnings:

Enforcement

- (e) **Part 5**—
- (i) allows the Bank to accept undertakings:
 - (ii) provides for the High Court to impose a pecuniary penalty for a failure to comply with applicable standards, conditions of licence, and the due diligence duty for directors:
 - (iii) provides for infringement offences:
 - (iv) creates an offence for giving false or misleading information under this Act:
 - (v) provides for the District Court to ban persons from participating in a deposit taking business:
 - (vi) provides for when a state of mind or conduct is attributed to a body corporate or other principal:

Depositor compensation scheme

- (f) **Part 6** establishes a depositor compensation scheme to—
- (i) provide certain compensation to eligible investors when a deposit taker is put into liquidation or is otherwise subject to a specified notice under that Part:
 - (ii) support a resolution measure undertaken in relation to a licensed deposit taker under **subpart 5** of that Part:

Crisis management and resolution

- (g) **Part 7**—
- (i) gives the Bank the power to issue directions to a licensed deposit taker or an associated person:
 - (ii) gives the Bank the power to remove, replace, or appoint a director of a licensed deposit taker:
 - (iii) provides for the resolution of a licensed deposit taker or an associated person that is in financial distress or other difficulties:
 - (iv) provides for compensation to be payable to creditors or shareholders that are worse off as a result of a resolution:
 - (v) regulates covered bonds:

Miscellaneous provisions

- (h) **Part 8**—
- (i) imposes restrictions on the use of the words “bank”, “banker”, and “banking”:
 - (ii) provides for co-operation with Australian financial authorities:
 - (iii) provides for the confidentiality of information given to the Bank:

- (iv) gives the Bank the power to specify how certain things are done under this Act (for example, how to apply for a licence):
- (v) provides for regulations.

6 Interpretation

In this Act, unless the context otherwise requires,—

agreement includes any contract, arrangement, or understanding

applicable standard, in relation to a person, means a standard issued under **subpart 2 of Part 3** that applies to the person

approved rating agency means a rating agency approved by the Bank under **subpart 1 of Part 3**

associated person or **associate** has the meaning set out in **section 7**

Australian financial authority means an Australian public authority prescribed by the regulations

bail-in instrument has the meaning set out in **section 74**

Bank means the Reserve Bank of New Zealand continued under the Reserve Bank of New Zealand Act 2021

Bank's Internet site means an Internet site maintained by, or on behalf of, the Bank

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

business, operation, or management has the meaning set out in **section 95(5)**

constitution means,—

- (a) in the case of a company within the meaning of section 2(1) of the Companies Act 1993, the constitution of the company; and
- (b) in the case of any other entity, the documents or instruments constituting or defining the constitution of the entity

co-operative company means a company registered as a co-operative company under the Co-operative Companies Act 1996

Council of Financial Regulators means the Council of Financial Regulators continued under subpart 4 of Part 6 of the Reserve Bank of New Zealand Act 2021

court means, in relation to any matter, the court before which the matter is to be determined (*see section 181*, which confers exclusive jurisdiction on the High Court in proceedings other than proceedings for offences or banning orders)

credit has the same meaning as in section 6 of the Credit Contracts and Consumer Finance Act 2003

credit union has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

current credit rating means a rating of creditworthiness that, in relation to a date on which a deposit taker is required to have a rating, was given not earlier than 1 year before that date

debt security has the same meaning as in section 8 of the FMCA

deposit taker has the meaning set out in **clause 2 of Schedule 2**

designated FMI has the same meaning as in section 5 of the Financial Market Infrastructures Act 2021

director means,—

- (a) in relation to a company, any person occupying the position of a director of the company by whatever name called:
- (b) in relation to a partnership (other than a limited partnership), any partner:
- (c) in relation to a limited partnership, any general partner:
- (d) in relation to a body corporate or unincorporate, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company:
- (e) in relation to any other person, that person

document has the same meaning as in section 4(1) of the Evidence Act 2006

enters resolution has the meaning set out in **section 263**

financial markets has the same meaning as in section 6(1) of the FMCA

financial service has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

financial service provider means a person who carries on a business of providing a financial service, whether or not—

- (a) the business is the provider's only business or the provider's principal business; or
- (b) the person is required to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

financial system—

- (a) means the financial system in New Zealand; and
- (b) includes the financial markets

FMCA means the Financial Markets Conduct Act 2013

friendly society has the same meaning as in section 2 of the Friendly Societies and Credit Unions Act 1982

governing body means,—

- (a) in relation to a body corporate, the board of directors (or other persons or body exercising powers of management, however described) of the body corporate;
- (b) in relation to a partnership or other unincorporated body of persons, either—
 - (i) the board of directors (or other persons or body exercising powers of management, however described) of the partnership or other unincorporated body of persons; or
 - (ii) if there is no board or other persons or body as described in **sub-paragraph (i)**, the partners of the partnership or members of the unincorporated body of persons

Governor means a person who occupies the position of Governor of the Bank (whether the person is appointed under section 82 or 96 of the Reserve Bank of New Zealand Act 2021)

holding entity has the meaning set out in **section 7**

home jurisdiction means,—

- (a) in the case of an overseas person that is a body corporate, the country in which that body is incorporated;
- (b) in the case of an overseas person that is an unincorporated body, the country in which that body has its head office or principal place of business

in resolution has the meaning set out in **section 263**

information includes any data, forecast, or document

infringement fee, in relation to an infringement offence, means the infringement fee for the offence specified in the provision that identifies the infringement offence

infringement offence means an offence identified in this Act as being an infringement offence

insolvent, in relation to a deposit taker or any other entity (A), means that—

- (a) A is unable to pay A's debts as they become due in the normal course of business; or
- (b) the value of A's assets is less than the value of A's liabilities, including contingent liabilities (and for this purpose section 4(4) of the Companies Act 1993 applies in respect of A as if it were a company even if it is not)

investigator means a person appointed as an investigator under **subpart 5 of Part 4**

law enforcement or regulatory agency has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021

licence means a licence issued under **Part 2**

licensed deposit taker means a person that holds a licence

licensed deposit taker group, in relation to a licensed deposit taker, means the licensed deposit taker and all of its subsidiaries

liquidation under New Zealand law, in relation to an overseas body corporate, includes a liquidation as referred to in section 342 of the Companies Act 1993

local authority has the meaning set out in section 5(1) of the Local Government Act 2002

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

New Zealand chief executive officer, in relation to an overseas deposit taker, means—

- (a) the most senior officer of that bank who is ordinarily resident in New Zealand; or
- (b) another person who may be nominated by that bank and agreed to in writing by the Bank

New Zealand chief financial officer, in relation to an overseas deposit taker, means—

- (a) the most senior officer of the deposit taker who is ordinarily resident in New Zealand (other than the New Zealand chief executive officer) and who is responsible for the accounting and financial reporting obligations of the deposit taker; or
- (b) another person who may be nominated by the deposit taker and is agreed to in writing by the Bank

non-deposit-taking lender means a person that carries on the business of lending money but is not a deposit taker

overseas deposit taker means a deposit taker that is an overseas person

overseas licensed deposit taker means a licensed deposit taker that is an overseas person

overseas person means—

- (a) a body corporate incorporated outside New Zealand; or
- (b) an unincorporated body that has its head office or principal place of business outside New Zealand

overseas supervisor means any authority or body in any country other than New Zealand that performs functions in relation to deposit takers that correspond with, or are similar to, those conferred on the Bank under this Act

protected deposit has the meaning set out in **section 186**

prudential legislation has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021

prudential obligation means an obligation imposed by or under any of the following:

- (a) this Act or the regulations:
- (b) the standards:
- (c) a condition of a licence issued under **Part 2**:
- (d) a direction given under this Act:
- (e) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and regulations made under that Act

regulations means regulations made under this Act

relative has the meaning set out in **section 79**

restricted word—

- (a) means any of the words “bank”, “banker”, and “banking”; and
- (b) includes—
 - (i) any of those words as part of any other word:
 - (ii) a translation of those words into another language (whether or not the translation of those words is part of any other word)

security interest means an interest in property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—

- (a) the form of the transaction; and
- (b) the identity of the person who has title to the collateral

senior manager, in relation to a person (A), means a person who occupies any of the following positions in respect of A (by whatever name called):

- (a) if A is an overseas person,—
 - (i) New Zealand chief executive officer:
 - (ii) New Zealand chief financial officer:
- (b) in any other case,—
 - (i) chief executive:
 - (ii) chief financial officer:
 - (iii) a manager who reports directly to the chief executive

significant transaction has the meaning set out in **section 39**

standard means a standard issued under **subpart 2 of Part 3**

statement of funding approach means a statement published under **subpart 7 of Part 6**

subsidiary means a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993

temporary high balance limit has the meaning set out in **section 196**

voting right means a currently exercisable right to cast a vote at meetings of members or shareholders of a body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:

- (a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the financial product that confers the voting right is in arrears or some other default exists;
- (b) on a proposal that affects rights attached to the financial product that confers the voting right;
- (c) during the liquidation of the body corporate;
- (d) in respect of a special, immaterial, or remote matter that is inconsequential to control of the body corporate.

7 **Meaning of associated person and holding entity**

- (1) For the purposes of this Act, unless the context otherwise requires, a person (A) is **associated** with another person (B) if—
 - (a) B is A's holding entity or subsidiary; or
 - (b) more than half of the voting securities of A, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by B and persons that are associated with B (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (c) more than half of the voting securities of each of A and B, other than voting securities that carry no right to participate beyond a specified amount in a distribution of either profits or capital, are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
 - (d) the businesses of A and B have been so carried on that the separate business of each person, or a substantial part of it, is not readily identifiable; or
 - (e) there is another person with which both persons are associated.
- (2) **Associated person** and **associate** have a corresponding meaning.
- (3) For the purposes of this Act, a person is another person's **holding entity** if, and only if, that other person is its subsidiary.

8 **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

9 Act binds the Crown

This Act binds the Crown.

**Part 2
Licensing of deposit takers****Subpart 1—Key provisions****10 Deposit taker must be licensed**

Every person who carries on business as a deposit taker must hold a licence.

11 Offence for deposit taker to carry on business without licence

- (1) A person (A) commits an offence if A—
 - (a) carries on business as a deposit taker without holding a licence; and
 - (b) knows that, or is reckless as to whether, it must hold a licence.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000,000.

12 No holding out as licensed

A person that is not licensed as a deposit taker must not, directly or indirectly, hold out that the person is a licensed deposit taker.

13 Offence for holding out

- (1) A person (A) commits an offence if A—
 - (a) contravenes **section 12**; and
 - (b) knows that, or is reckless as to whether, what they are holding out is not the case.
- (2) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000,000.

Subpart 2—Issue of licences**14 Bank may issue licence**

The Bank may issue a licence in accordance with this subpart.

15 Application for licence

- (1) A body corporate may apply for a licence in the manner that is specified by the Bank.
- (2) *See **subpart 4 of Part 8*** (which provides for the Bank's power to specify the manner in which an application is made).

16 When licence must be issued

- (1) The Bank must, after receiving an application, issue a licence to which the application relates if the Bank is satisfied that—
 - (a) the applicant has the ability to comply with the prudential obligations (including prudential obligations that the Bank proposes to impose if it issues the licence); and
 - (b) the applicant's incorporation and ownership structure and its governance structure are appropriate, having regard to the size and nature of the applicant's business or proposed business; and
 - (c) the applicant's ownership (including the financial strength and source of funding of each person to which **subsection (2)** applies) is appropriate, having regard to the size and nature of the applicant's business or proposed business; and
 - (d) the applicant's directors, senior managers, and proposed directors and senior managers are fit and proper persons to hold their respective positions; and
 - (e) the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 on and from commencing to provide the service of being a licensed deposit taker; and
 - (f) in the case of an applicant that is an overseas person, the criteria set out in **section 17** are satisfied; and
 - (g) the eligibility criteria (if any) that are prescribed by the regulations are satisfied.
- (2) For the purposes of **subsection (1)(c)**, a person (A) is a person to which this subsection applies if—
 - (a) A has the power (whether directly or indirectly) to exercise, or control the exercise of, 25% or more of the voting rights in the applicant; or
 - (b) A has, together with 1 or more connected persons, the power (whether directly or indirectly) to exercise, or control the exercise of, 25% or more of the voting rights in the applicant.
- (3) In **subsection (2)**, a **connected person**, in relation to A, means—
 - (a) a person who is acting or will act jointly or in concert with A in respect of exercising, or controlling the exercise of, a power referred to in **subsection (2)(a) or (b)**; or

- (b) a person who acts, or is accustomed to acting, in accordance with the wishes of A.

17 Additional criteria for overseas applicants

- (1) For the purposes of **section 16(1)(f)**, the Bank must be satisfied that the following are appropriate:
 - (a) the law and regulatory requirements of the applicant's home jurisdiction that apply to the applicant and relate to the relevant matters;
 - (b) the nature and extent of prudential supervision that applies to the applicant and to deposit takers generally in the applicant's home jurisdiction.
- (2) The Bank must,—
 - (a) in the case of **subsection (1)(a)**, have regard to whether the law and regulatory requirements of the applicant's home jurisdiction are, in terms of achieving the purposes of this Act, at least as satisfactory as the law and regulatory requirements of New Zealand that relate to the relevant matters and apply to deposit takers incorporated in New Zealand; and
 - (b) in the case of **subsection (1)(b)**, have regard to whether the prudential supervision is, in terms of achieving the purposes of this Act, at least as satisfactory as the nature and extent of prudential supervision that applies to deposit takers incorporated in New Zealand.
- (3) The **relevant matters** are—
 - (a) the licensing, registration, or authorisation of deposit takers; and
 - (b) the duties and powers of directors; and
 - (c) the capital standards that apply to deposit takers; and
 - (d) the disclosure of financial and other information to the public; and
 - (e) assessments of the fitness and propriety of directors and senior managers; and
 - (f) matters concerning deposit takers that are insolvent or otherwise in serious financial difficulties (including the recognition and priorities of claims of creditors or classes of creditors in the event of an insolvency).

18 Overseas requirements may be treated as appropriate

The following must be treated as being appropriate if the applicant's home jurisdiction is a jurisdiction prescribed in the regulations:

- (a) the law and regulatory requirements referred to in **section 17(1)(a)**;
- (b) the nature and extent of the prudential supervision referred to in **section 17(1)(b)**.

19 Consultation requirements

The Bank must, before making a decision under **section 16**, consult—

- (a) the FMA; and
- (b) the applicant on the conditions and standards that the Bank proposes to impose in relation to the applicant (if the Bank were to issue a licence).

20 Notice of decision

- (1) The Bank must give notice of its decision under **section 16** to the applicant.
- (2) If the Bank refuses to issue a licence, the notice must include a statement of the Bank's reasons for exercising the power.

21 Bank must keep register of licensed deposit takers

- (1) The Bank must keep a public register of licensed deposit takers.
- (2) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

22 Form and content of register

- (1) The Bank must determine the form of the register of licensed deposit takers and may amend the form as it considers necessary.
- (2) The register must include the following in relation to each licensed deposit taker:
 - (a) the name of the deposit taker;
 - (b) the date on which its licence was issued;
 - (c) the deposit taker's current credit rating under **subpart 1 of Part 3** and the name of the rating agency that gave that rating;
 - (d) a summary of the matters that are specified under **section 87** in relation to the deposit taker;
 - (e) all other information prescribed by the regulations.
- (3) The register may also include a summary of—
 - (a) 1 or more conditions or standards that apply to the deposit taker; and
 - (b) any other matters that the Bank thinks fit.

Subpart 3—Conditions of licences

23 Bank may impose conditions on licence

- (1) The Bank may issue a licence to a person (A) subject to any of the following conditions:
 - (a) a condition that identifies the standards that apply to A:

- (b) a condition that identifies requirements in standards that apply to A:

Example

A standard provides that a particular capital requirement applies to a deposit taker if the conditions of its licence state that the requirement applies.

- (c) conditions that provide for anything that the standards say may or must be provided for by conditions:

Example

A standard provides for a specific minimum capital ratio (within a range set out in the standard) that a deposit taker must maintain to be set in a licence condition.

- (d) conditions that impose limits or restrictions on either or both of the following:

- (i) the size or nature of the whole or any part of A's business or proposed business:
- (ii) any activities that may be carried out by A:

- (e) in the case of a person that has not yet commenced carrying on the business of borrowing and lending money in New Zealand, either or both of the following:

- (i) a condition that specifies the time period within which A must commence carrying on that business in New Zealand:
- (ii) a condition that specifies the extent of that business in New Zealand that A must have within a specified period:

- (f) a condition that requires A or A's directors (or both) to certify that 1 or more of the following have been complied with (being certification that is given in the manner specified by the Bank):

- (i) any prudential obligations:
- (ii) any requirements of any other legislation that are imposed on A as a licensed deposit taker (for example, financial reporting obligations).

- (2) *See* **subpart 2 of Part 5**, which provides for a court to impose a pecuniary penalty for a contravention of a condition.

24 Bank may modify conditions of licence

- (1) The Bank may, at any time after a licence is issued, by notice to the licensed deposit taker,—
- (a) impose conditions of the licence (whether or not the licence is already subject to conditions); or
 - (b) vary, remove, add to, or substitute any conditions of the licence.

- (2) The Bank must, before exercising the power,—
 - (a) give the deposit taker not less than 7 days' notice of the Bank's intention to do so; and
 - (b) give the deposit taker a reasonable opportunity to make submissions to the Bank; and
 - (c) have regard to those submissions.
- (3) The notice given to the deposit taker must contain, or be accompanied by, a statement of the Bank's reasons.

Subpart 4—Fit and proper requirements

25 Licensed deposit taker must obtain Bank's approval before new director or senior manager is appointed

- (1) A licensed deposit taker must obtain the approval of the Bank before a new director or senior manager is appointed.
- (2) A request for the Bank to give its approval under this subpart must—
 - (a) contain or be accompanied by a fit and proper certificate for the new director or senior manager; and
 - (b) otherwise be made in the manner that is specified by the Bank.
- (3) This section does not apply to an overseas licensed deposit taker (*see instead section 29*).

26 Offence for appointing new director or senior manager without approval

A licensed deposit taker that contravenes **section 25(1)** commits an offence and is liable on conviction to a fine not exceeding \$500,000.

27 Bank's decision on approval

- (1) The Bank may, after considering a request for approval under **section 25**,—
 - (a) give its approval unconditionally or subject to any conditions that the Bank thinks fit; or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed deposit taker within 20 working days after receiving all of the information that is reasonably required by the Bank to assist it in determining whether to give its approval.
- (3) If the Bank refuses to give its approval, the notice under **subsection (2)** must contain a statement of its reasons.

28 Bank may suspend director or senior manager if approval not obtained

- (1) If a licensed deposit taker fails to comply with **section 25** in relation to a director or senior manager (**B**), the Bank may make an order prohibiting or

restricting B, without the leave of the Bank, from either or both of the following:

- (a) acting as a director of the deposit taker:
 - (b) being concerned in, or taking part in the management of, the deposit taker.
- (2) The order ceases to be in force if the Bank approves the appointment.
 - (3) If B knowingly fails to comply with the order, B commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).
 - (4) *See also **subpart 5 of Part 5***, which allows the District Court to make a banning order if B fails to comply with the Bank's order.

29 Overseas licensed deposit taker must notify Bank if new director or senior manager is appointed

- (1) An overseas licensed deposit taker must, no later than 20 working days after the appointment of a new director or senior manager, provide to the Bank a fit and proper certificate for the new director or senior manager.
- (2) An overseas licensed deposit taker that contravenes **subsection (1)** commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

30 Bank may require further fit and proper certificate

- (1) If the Bank has given a notice to a licensed deposit taker that requires it to give to the Bank a fit and proper certificate for a specified director or senior manager, the deposit taker must, in the manner specified by the Bank, comply with the requirement.
- (2) This section applies whether or not a certificate in respect of the director or officer has previously been provided under this subpart.
- (3) A licensed deposit taker that contravenes **subsection (1)** commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

31 Deposit taker's duty on becoming aware of fit and proper concerns

- (1) This section applies if a licensed deposit taker becomes aware of information on the basis of which it could reasonably form the opinion that a director or senior manager of the deposit taker is not, or is not likely to be, a fit and proper person to hold the relevant position.

- (2) The deposit taker must, as soon as practicable, disclose to the Bank all information relevant to that matter that is in the possession or under the control of the deposit taker.
- (3) In forming an opinion under **subsection (1)**, the licensed deposit taker must have regard to the fit and proper matters specified in an applicable standard.
- (4) In this section, a **director or senior manager** of the deposit taker includes a proposed new director or senior manager in respect of whom the deposit taker has requested approval under **section 25**.

32 Offence for failing to disclose fit and proper concerns

A licensed deposit taker that, without reasonable excuse, contravenes **section 31** commits an offence and is liable on conviction to a fine not exceeding \$500,000.

33 Power to remove directors and senior managers

- (1) This section applies if the Bank, after having regard to the fit and proper matters specified in an applicable standard, has reasonable grounds to believe that a director or senior manager of a licensed deposit taker is not a fit and proper person to hold the relevant position.
- (2) The Bank may remove the director or senior manager from the relevant position from a date specified by the Bank.

34 Bank may direct that person may not be reappointed

If the Bank acts under **section 33**, the Bank may give a direction that the director or senior manager may not be reappointed as a director or senior manager of the licensed deposit taker—

- (a) at any time; or
- (b) for a period specified by the Bank; or
- (c) until 1 or more things specified by the Bank occur (for example, the director or senior manager receives a specified qualification).

35 Offences to contravene direction

- (1) A licensed deposit taker that reappoints a person as a director or senior manager in contravention of a direction under **section 34** commits an offence and is liable on conviction to a fine not exceeding \$500,000.
- (2) A person who has been removed as a director or manager under **section 33** commits an offence if they accept reappointment to a position in contravention of a direction under **section 34**.
- (3) A person who commits an offence against **subsection (2)** is liable on conviction to a fine not exceeding \$50,000.

36 Further provisions about power to remove

- (1) **Sections 33 and 34** apply whether or not the director or senior manager is a fit and proper person to hold their position under the licensed deposit taker's fit and proper policy.
- (2) **Sections 33 and 34** do not apply to a director of an overseas deposit taker.
- (3) **Sections 33 and 34** have effect despite any agreement, legislation, or rule of law, or the terms of the constitution of a licensed deposit taker.

37 How power to remove is exercised

- (1) The Bank must, before exercising a power under **section 33**,—
 - (a) give the licensed deposit taker and the director or senior manager not less than 7 days' notice of the Bank's intention to do so; and
 - (b) give the licensed deposit taker and the director or senior manager a reasonable opportunity to make submissions to the Bank; and
 - (c) have regard to those submissions.
- (2) The notice given to the deposit taker and the director or senior manager must contain, or be accompanied by, a statement of the Bank's reasons.
- (3) The Bank must exercise the powers conferred by **sections 33 and 34** by giving notice to—
 - (a) the licensed deposit taker; and
 - (b) the director or the senior manager; and
 - (c) in the case of a director, the Registrar of Companies.
- (4) A notice given under **subsection (3)(c)** is sufficient compliance with section 159 of the Companies Act 1993.

Subpart 5—Bank's approval required for certain changes

*Change of control***38 Person who obtains control over licensed deposit taker must obtain Bank's approval**

- (1) A person (A) must obtain the approval of the Bank before giving effect to a transaction if the transaction would result in A obtaining control over a licensed deposit taker.
- (2) A **obtains control** over a licensed deposit taker if—
 - (a) A obtains the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 50% or more of the voting rights in the deposit taker; or
 - (ii) appoint 50% or more of the directors of the deposit taker; or

- (b) A obtains, together with 1 or more specified persons, the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 50% or more of the voting rights in the deposit taker; or
 - (ii) appoint 50% or more of the directors of the deposit taker.
- (3) In this section, a **specified person**, in relation to A, means—
 - (a) a person who is acting or will act jointly or in concert with A in respect of exercising, or controlling the exercise of, a power referred to in **subsection (2)(b)(i) or (ii)**; or
 - (b) a person who acts, or is accustomed to acting, in accordance with the wishes of A.

Significant transactions

39 Licensed deposit taker must obtain Bank’s approval before entering into significant transaction

- (1) A licensed deposit taker must obtain the approval of the Bank before entering into a significant transaction.
- (2) In this Act, **significant transaction** means any of the following:
 - (a) a transaction that involves,—
 - (i) in the case of an overseas deposit taker, the transfer of all or a material part of the deposit taker’s New Zealand business to another person; or
 - (ii) in the case of any other deposit taker, the transfer of all or a material part of the deposit taker’s business to another person:
 - (b) any other transaction of a kind that is specified in standards as a significant transaction in respect of which approval is required under this subpart.
- (3) Whether a part of a business is **material** must be determined in accordance with the standards.

Amalgamation

40 Licensed deposit taker must obtain Bank’s approval before amalgamation

- (1) A licensed deposit taker must obtain the approval of the Bank before the deposit taker amalgamates with another person (whether it occurs under Part 13 of the Companies Act 1993 or any other law of similar effect that results in 2 or more entities amalgamating and continuing as 1 entity).
- (2) In this subpart, **amalgamated entity** means the single entity that is proposed to result from and continue after a proposed amalgamation that requires approval under this section.

*Consequences of failing to get approval***41 Offence for failing to get approval**

- (1) A person (A) commits an offence if A—
 - (a) contravenes any of **sections 38 to 40**; and
 - (b) knows that, or is reckless as to whether, it must obtain the Bank's approval under those sections.
- (2) A person that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

42 Failure to get approval does not invalidate proposed change

Nothing in this subpart invalidates any change of control, significant transaction, or amalgamation made without the approval of the Bank.

*Process for approval***43 Meaning of proposed change**

In this subpart, **proposed change** means any of the following in respect of which approval is required under this subpart:

- (a) the obtaining of control over a licensed deposit taker:
- (b) the entering into of a significant transaction:
- (c) the amalgamation of a licensed deposit taker with 1 or more other persons.

44 Request for approval

- (1) A request for the Bank to give its approval under this subpart must be made in the manner that the Bank specifies.
- (2) A joint request may be made by 2 or more persons that are parties to the proposed change.

45 Report on proposal

- (1) The Bank may arrange for a suitably qualified person (B) to prepare a report on a proposed change.
- (2) A person that makes a request and every other party to the proposed change must provide to B the information that B requires to assist them in preparing the report.

46 Bank must consider whether it would still be satisfied of licensing matters

The Bank must, in considering a request for approval under this subpart, consider whether, if the proposed change occurs, the Bank would still be satisfied

of the matters in **section 16** (which are the matters that the Bank must be satisfied of before an applicant is entitled to be issued with a licence).

47 Bank's decision on approval

- (1) The Bank may, after considering a request for approval under this subpart,—
 - (a) give its approval unconditionally or subject to any conditions that the Bank may impose under **subsection (3)**; or
 - (b) refuse to give its approval.
- (2) The Bank must give notice of its decision to the licensed deposit taker and any other person who made the request within 20 working days after receiving both of the following:
 - (a) all of the information that is reasonably required by the Bank to assist it in determining whether to give its approval:
 - (b) all reports that the Bank has arranged to receive under this subpart in respect of the matter.
- (3) The approval may be subject to any conditions prescribed by the regulations or conditions that relate to matters prescribed in the regulations.
- (4) If the Bank refuses to give its approval, the notice under **subsection (2)** must contain a statement of its reasons.

48 Offence for contravening condition of approval

A person that contravenes a condition of approval imposed under **section 47** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
- (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

49 Requirement for approval is in addition to other requirements

This subpart does not limit any other legislation that must be complied with in order to give effect to a proposed change that requires approval under this subpart (for example, in the case of amalgamating companies, the requirements of Part 13 of the Companies Act 1993).

Subpart 6—Cancellation

50 Cancellation of licence

- (1) The Bank may cancel a licence held by a person (A) if the Bank is satisfied that—
 - (a) the information provided under **section 15** is false or misleading in a material particular and A has not yet commenced carrying on the business of borrowing and lending money in New Zealand:

- (b) A has contravened a condition under **section 23(1)(e)(i)** (which requires A to commence carrying on the business of borrowing and lending money in New Zealand within a particular period);
 - (c) A is not, or is no longer, a deposit taker and A does not owe any obligations to pay money to any eligible investor under any protected deposit;
 - (d) A has been liquidated, wound up, or dissolved or has otherwise ceased to exist.
- (2) For the purposes of **subsection (1)(c)**, the Bank may disregard any obligation on A to pay money under a right of subrogation under **subpart 4 of Part 6**.

51 Process for cancelling licence

- (1) The Bank must, before cancelling a licence held by a person (A),—
- (a) consult the FMA; and
 - (b) give A notice of the Bank’s intention to cancel the licence; and
 - (c) have regard to any objections that are received before the close of the date specified under **subsection (2)(b)**.
- (2) The notice given to A must—
- (a) contain, or be accompanied by, a statement of the Bank’s reasons; and
 - (b) specify the date by which A must deliver any objection to the Bank (which must be not less than 20 working days after the date of the notice).
- (3) **Subsection (1)(b) and (c)** does not apply if—
- (a) A asked the Bank to cancel its licence; or
 - (b) A has been liquidated, wound up, or dissolved or has otherwise ceased to exist.

52 Notice of cancellation

The Bank must, as soon as practicable after cancelling a licence held by a person (A), give—

- (a) notice of the cancellation on the Bank’s Internet site; and
- (b) in the case of a cancellation under **section 50(1)(a) to (c)**, notice of the cancellation to A.

Subpart 7—Appeals

53 Appeals against licensing and fit and proper decisions

A person may appeal to the court against a decision of the Bank under this Part to—

- (a) decline to issue a licence to the person; or

- (b) decline to approve the person as a director or senior manager under **subpart 4**; or
- (c) remove the person as a director or senior manager under **subpart 4**.

54 Appeals against other decisions of Bank on questions of law only

A person that considers that any of the following decisions of the Bank is wrong in law may appeal to the court against the decision on a question of law only:

- (a) a decision to impose conditions on the person's licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person's licence; or
- (b) a decision to decline to give an approval under **subpart 5**.

55 Appeal does not operate as stay

An appeal under this subpart does not operate as a stay of any decision appealed against unless the court orders otherwise.

Part 3 Regulation of deposit takers

Subpart 1—Credit rating

56 Licensed deposit taker must have current credit rating

- (1) A licensed deposit taker must have a current credit rating that is given by an approved rating agency.
- (2) In this Act, a **credit rating**, in relation to a deposit taker, is a rating of its creditworthiness that complies with the requirements prescribed by the standards.
- (3) *See* **subpart 6 of Part 8**, which allows the Bank to grant an exemption from this section.

57 Offence for failing to have current credit rating

A licensed deposit taker that contravenes **section 56** commits an offence and is liable on conviction to a fine not exceeding \$2,500,000.

58 Bank may approve rating agencies

- (1) The Bank may approve a person as a rating agency for the purposes of this Act.
- (2) In deciding whether to approve a person as a rating agency, the Bank must have regard to the following:
 - (a) the independence of the rating agency;
 - (b) the adequacy of resources available to the rating agency;

- (c) the credibility and objectivity of the rating agency's methodology:
- (d) the consistency and comparability of the rating agency's ratings when assessed against ratings industry practice:
- (e) the adequacy of the rating agency's disclosure of information, including information about its processes, experience, and ownership:
- (f) relevant international standards, codes, and recommended practices relating to the ratings industry.

59 List of approved rating agencies

The Bank must publish and keep up to date a list of approved rating agencies on the Bank's Internet site at all reasonable times.

60 Bank may review approval

- (1) The Bank may, at any time, review the approval of a person as a rating agency, and in conducting the review the Bank must have regard to the matters in **section 58(2)**.
- (2) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.
- (3) A credit rating given to a deposit taker by an agency at a time when the agency was an approved rating agency does not cease to be a rating from an approved rating agency for the purposes of this Act by reason of the fact that the approval of the agency has expired or has been revoked.

61 Licensed deposit taker must notify Bank of change in rating

- (1) A licensed deposit taker must, within 20 working days after receiving notice that its credit rating has changed, deliver to the Bank a certificate by the approved rating agency of the new rating.
- (2) The certificate must state the date on which it was given.
- (3) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

62 Licensed deposit taker must notify Bank of credit watch warning

- (1) A licensed deposit taker must, within 20 working days after receiving notice that a credit watch warning has been given in respect of the deposit taker's credit rating, deliver to the Bank a certificate by the approved rating agency of the credit watch warning.
- (2) The certificate must state the date on which it was given and the reasons for it.
- (3) In this section, **credit watch warning** means any word, expression, or symbol used by an approved rating agency to indicate that the agency has a deposit

taker under consideration with a view to a possible downgrading in a credit rating given to the deposit taker by the agency.

- (4) A licensed deposit taker that contravenes **subsection (1)** commits an infringement offence and is liable to—
- (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.

63 Disclosure of credit rating on licensed deposit taker's Internet site

- (1) This section applies to a licensed deposit taker (A) if—
- (a) A is required to comply with **section 56** or A otherwise has a current credit rating given by an approved rating agency; and
 - (b) an Internet site that is maintained by, or on behalf of, A contains information or advertising about A's debt securities.
- (2) A must ensure that the Internet site—
- (a) states clearly and prominently—
 - (i) A's current credit rating; and
 - (ii) the name of the agency by which the rating was given; and
 - (iii) the rating scale of which the rating forms part; or
 - (b) contains a prominent link to another Internet site that clearly and prominently states the matters specified in **paragraph (a)**.
- (3) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
- (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

64 Other advertising of credit ratings

- (1) A licensed deposit taker may distribute an advertisement that refers to its current credit rating, or to any part of the rating, only if the advertisement also states clearly and prominently—
- (a) the rating; and
 - (b) the name of the agency that gave the rating; and
 - (c) that a description of any scale of which the rating forms part is available on a specified Internet site.
- (2) The Internet site that is specified may be an Internet site maintained by, or on behalf of, the licensed deposit taker or the agency that gave the rating.
- (3) For the purposes of this section and **section 65**,—
- (a) an advertisement is **distributed** if it is communicated to the public in New Zealand (with a view to obtaining business from relevant investors)

by newspaper, magazine, brochure, pamphlet, notice, circular, radio or television broadcast, film, the Internet, or other means; and

- (b) **relevant investor** means a person to whom the licensed deposit taker makes an offer referred to in **clause 2(2)(a) of Schedule 2**.
- (4) However, this section does not apply to advertising on an Internet site that is maintained by, or on behalf of, a licensed deposit taker (but **section 63** will apply).
- (5) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

65 Licensed deposit taker must not disclose or advertise credit ratings from non-approved agencies

- (1) A licensed deposit taker must not—
 - (a) disclose to a relevant investor a rating from a non-approved agency; or
 - (b) distribute an advertisement for any of the deposit taker's deposit-taking business that refers to a rating from a non-approved agency.
- (2) **Subsection (1)(a)** does not apply to a disclosure to an associated person or employee of the deposit taker.
- (3) In this section, **rating from a non-approved agency**—
 - (a) means, in relation to a licensed deposit taker, an assessment of its credit or creditworthiness that is in substance a credit rating or financial strength rating (whether called a rating, grading, scoring, ranking, or by any other name) that is issued or given by an agency that is not an approved rating agency; but
 - (b) does not include a credit rating referred to in **section 60(3)**.
- (4) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

66 Licensed deposit taker must give public notice of downgrade

- (1) If a licensed deposit taker's credit rating is downgraded, the deposit taker must give notice of the downgrade.
- (2) The notice—
 - (a) must be given on an Internet site maintained by, or on behalf of, the deposit taker; and
 - (b) must be given within 10 working days after the downgrade is given; and

- (c) may include any additional matter that the deposit taker considers is relevant to a proper understanding of the reasons for the downgrade.
- (3) In this section, a deposit taker's credit rating is **downgraded** if it is given a credit rating by an approved rating agency that is lower than its immediately preceding credit rating.
- (4) A licensed deposit taker that contravenes this section commits an infringement offence and is liable to—
 - (a) an infringement fee of \$20,000; or
 - (b) a fine imposed by a court not exceeding \$50,000.

Subpart 2—Standards

67 Bank may issue standards

- (1) The Bank may, in accordance with this subpart, issue standards if the Bank is satisfied that the standards are necessary or desirable for 1 or more of the purposes of this Act.
- (2) Standards issued under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

68 Licensed deposit taker must comply with applicable standards

- (1) A licensed deposit taker must comply with all applicable standards.
- (2) *See* **subpart 2 of Part 5**, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard.

69 Application of standards

- (1) A standard may do either or both of the following:
 - (a) apply to all deposit takers, a particular deposit taker, or a class of deposit takers;
 - (b) apply in all circumstances, particular circumstances, or a class of circumstances.

Example

Different lending standards may apply to lending to customers in different geographical areas.

- (2) A standard may provide for either or both of the following (*see* **section 23(1)(a) and (b)**):
 - (a) the standard to apply to a deposit taker if a condition of its licence states that the standard applies;
 - (b) a requirement of the standard to apply to a deposit taker if a condition of its licence states that the requirement applies.
- (3) **Subsection (2)** does not limit **subsection (1)**.

- (4) If a matter referred to in any of **sections 72 to 85** is specified as including certain specific matters, those specific matters do not limit the matter referred to.

Procedural matters

70 Procedure for issuing standards

- (1) Before issuing a standard (the **proposed standard**), the Bank must—
- (a) notify the Minister of the prudential policy that the Bank intends to implement through the proposed standard; and
 - (b) consult the other members of the Council of Financial Regulators; and
 - (c) consult the persons, or representatives of the persons, that the Bank considers will be substantially affected by the issue of the proposed standard.
- (2) A failure to comply with this section does not affect the validity of any standard.

71 When procedural requirements do not apply

- (1) **Section 70(1)(a)** does not apply if—
- (a) the proposed standard will apply only to a particular deposit taker; or
 - (b) the Bank is satisfied that the prudential policy is of a minor or technical nature only.
- (2) **Section 70(1)(b) and (c)** does not apply to a standard that amends another standard if the Bank is satisfied that the amendment—
- (a) is only correcting a minor error; or
 - (b) is otherwise of a minor or technical nature only.

Subject matter of standards

72 Governance, incorporation structure, and ownership

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the governance of a deposit taker, including—
 - (i) group and organisational structure; and
 - (ii) the composition, size, and structure of the governing body; and
 - (iii) the responsibilities of the governing body, of committees of that body, and of its management:
- (b) the remuneration of, and incentives available to, directors, senior managers, and employees and for any compensation or other benefits payable to directors, senior managers, and employees who cease to hold office, including matters relating to—

- (i) governance of remuneration and incentive practices; and
 - (ii) alignment of those practices with prudent risk taking; and
 - (iii) supervisory oversight and engagement by stakeholders:
- (c) the incorporation structure of a deposit taker, including matters relating to—
- (i) a deposit taker's constitution (including prohibiting or restricting provisions that may be included in a constitution or requiring a constitution to include specified provisions); and
 - (ii) whether a deposit taker must be incorporated under New Zealand legislation:
- (d) the ownership structure of a deposit taker and its ownership.

73 Capital, liquidity, security interests, and credit ratings

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) capital, including matters relating to capital ratios, minimum capital, assessing capital adequacy, capital recognition, capital repayment, defining categories of qualifying capital, and methods of calculating capital:
- (b) liquidity, including matters relating to managing liquidity risk, contingency funding, defining categories of qualifying liquidity, and methods of calculating liquidity:
- (c) security interests given over the property of the deposit taker, including 1 or more of the following:
 - (i) limits on the proportion of the deposit taker's property that may be subject to a security interest:
 - (ii) restrictions or prohibitions on the property to which a security interest may relate:
 - (iii) restrictions or prohibitions on who may be given a security interest over the deposit taker's property:
 - (iv) any other requirements relating to the terms and conditions of agreements that create or provide for a security interest:
- (d) ratings of creditworthiness required to be held by a licensed deposit taker, including—
 - (i) the type of rating (for example, whether it is a short-term or long-term rating); and
 - (ii) what the rating must relate to (for example, whether it indicates the creditworthiness of a deposit taker with respect to a specific financial obligation or applies to the deposit taker's overall creditworthiness).

74 Bail-in standards

- (1) A standard may regulate, deal with, or otherwise relate to bail-in arrangements (a **bail-in standard**).
- (2) A bail-in standard may (without limitation) do 1 or more of the following:
 - (a) require a licensed deposit taker (**A**) to issue 1 or more kinds of bail-in instruments:
 - (b) specify the terms and conditions of those bail-in instruments:
 - (c) specify the events or other circumstances in which the matters in **subsection (4)(a), (b), (c), or (d)** occur:
 - (d) specify the manner in which those bail-in instruments must be offered:
 - (e) provide for how much must be raised from the issue of those bail-in instruments and how much must be owed under those bail-in instruments.
- (3) The events or circumstances under **subsection (2)(c)** may include either or both of the following:
 - (a) the Bank giving a direction under **subpart 3 of Part 7**:
 - (b) the Bank giving a notice to A.
- (4) A **bail-in instrument** means a financial product the terms and conditions of which provide for 1 or more of the following:
 - (a) the product to be converted into, or exchanged for, 1 or more equity securities (or some other financial product) of A or of a subsidiary of A;
or
 - (b) the reduction or cancellation of an amount owing under the product (in whole or in part):
 - (c) the extension of the time for payment of an amount owing under the product (in whole or in part):
 - (d) any other variation of the terms and conditions of the product.

Example

A bail-in standard requires a licensed deposit taker (**A**) to have at least \$1 billion worth of convertible debt securities.

The standard requires that the debt securities are offered under particular terms and conditions. Under those terms and conditions, the Bank may give a direction to A that triggers the conversion of those debt securities into ordinary shares in A.

75 Fit and proper persons

- (1) A standard may regulate, deal with, or otherwise relate to matters to ensure that only a fit and proper person may be appointed to, and continue to hold, a position as a director or senior manager, including—

- (a) specifying the matters that are relevant to the consideration of whether a person is a fit and proper person to be appointed to, and continue to hold, a position as a director or senior manager; and
 - (b) specifying the information that must be provided to the Bank when seeking the Bank's approval of the appointment of a director or senior manager; and
 - (c) specifying the contents of fit and proper certificates; and
 - (d) imposing requirements for establishing, implementing, maintaining, and complying with a policy for the purpose of ensuring that only fit and proper persons are appointed to, and continue to hold, positions as directors or senior managers (a **fit and proper policy**); and
 - (e) imposing requirements for re-assessing whether a director or senior manager is a fit and proper person to continue to hold their position.
- (2) A standard for a fit and proper policy may (without limitation) require the policy to do 1 or more of the following:
- (a) specify the qualifications, requirements, and other criteria for a particular position, including matters relating to a person's character, competence, and experience relative to the duties of the position:
 - (b) contain provisions to encourage any person to disclose information to the deposit taker or the Bank that may be relevant to a fit and proper assessment:
 - (c) contain provisions for giving or obtaining any consents required for the collection and use of any information by—
 - (i) the deposit taker to comply with the policy or **subpart 4 of Part 2**; and
 - (ii) the Bank for the performance or exercise of its functions, powers, or duties in connection with the policy.

76 Lending and other exposures

- (1) A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:
- (a) loan concentration and risk exposures:
 - (b) a deposit taker's business of lending money (a **lending standard**):
 - (c) exposures to related parties of a deposit taker (*see* **section 79**), including any of the following matters:
 - (i) requiring transactions between a deposit taker and any related party to be entered into only on a particular basis (for example, on arm's-length terms):
 - (ii) monitoring transactions between a deposit taker and any related party:

- (iii) managing risks arising from exposures to any related party:
 - (iv) writing-off exposures to any related party:
 - (v) any other limits or restrictions on exposures to related parties.
- (2) A lending standard may specify income-based criteria, asset-based criteria, or any other criteria that must be applied by a deposit taker (or non-deposit-taking lender) when determining whether a person qualifies for a loan or the provision of any other credit.

Examples of criteria

The types of criteria that may be specified include debt-to-income ratios and loan-to-value ratios.

- (3) A lending standard may impose reporting requirements in connection with the other requirements of the standard.
- (4) In this subpart, **lending** means providing credit under credit contracts (within the meaning of **clause 1 of Schedule 2**).

77 Classes of lending must be prescribed by regulations

- (1) A lending standard may relate only to the class or classes of lending that are prescribed by the regulations.
- (2) The regulations may prescribe classes of lending by reference to the purpose of the lending, the nature of the lending, or any other circumstances in which the lending occurs.

78 Application of lending standards may extend to non-deposit-taking lenders

- (1) A lending standard may apply to a particular non-deposit-taking lender or class of non-deposit-taking lenders if the regulations authorise the Bank to issue a lending standard with that application.
- (2) A non-deposit-taking lender to which a lending standard applies must comply with the standard (*see* **subpart 2 of Part 5**, which provides for a court to impose a pecuniary penalty for a contravention of an applicable standard).

79 Exposures to related parties

- (1) This section applies for the purposes of **section 76(1)(c)**.
- (2) A person (A) is a **related party** of a deposit taker if—
- (a) A is a director or senior manager of the deposit taker or of any of its associated persons; or
 - (b) A is a relative of a director or senior manager of the deposit taker or of any of its associated persons; or
 - (c) A is a subsidiary of the deposit taker; or
 - (d) A has a substantial interest in the deposit taker; or
 - (e) A is a person in which the deposit taker has a substantial interest; or

- (f) another person with a substantial interest in the deposit taker has a substantial interest in A; or
 - (g) 40% or more of A's governing body are the same persons as 40% or more of the governing body of—
 - (i) the deposit taker; or
 - (ii) another person that has a substantial interest in the deposit taker; or
 - (h) A is a person, or a member of a class of persons, declared by regulations to be a related party.
- (3) In this section, a person (**B**) has a **substantial interest** in an entity if—
- (a) B has the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 10% or more of the voting rights in the entity; or
 - (ii) appoint 25% or more of the directors of the entity; or
 - (b) B has, together with 1 or more specified persons, the power (whether directly or indirectly) to—
 - (i) exercise, or control the exercise of, 10% or more of the voting rights in the entity; or
 - (ii) appoint 25% or more of the directors of the entity.
- (4) In this section,—
- relative**, in relation to any person, means—
- (a) the person's spouse, civil union partner, or de facto partner; or
 - (b) any parent, step-parent, brother, sister, child, or stepchild of the person; or
 - (c) any parent, step-parent, brother, sister, child, or stepchild of the person's spouse, civil union partner, or de facto partner
- specified person**, in relation to B, means—
- (a) a person who is acting, or will act, jointly or in concert with B in respect of exercising, or controlling the exercise of, a power referred to in **subsection (3)(b)(i) or (ii)**; or
 - (b) a person who acts, or is accustomed to acting, in accordance with the wishes of B.

80 Risk management, business continuity planning, and problem assets

A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

- (a) the management by a deposit taker of 1 or more of the following risks (including policies and processes to identify, measure, evaluate, monitor, report on, control, and mitigate those risks):

- (i) operational risk:
- (ii) credit risk:
- (iii) liquidity risk:
- (iv) interest rate risk:
- (v) concentration risk:
- (vi) market risk:
- (vii) model risk (for example, the risk that a model for calculating capital will not perform adequately):
- (viii) cybersecurity risk:
- (b) policies and processes for—
 - (i) business continuity planning:
 - (ii) the early identification and management of problem assets (including the classification and valuation of those assets); and
 - (iii) maintaining adequate provisions and reserves in connection with problem assets.

81 Depositor compensation

A standard may regulate, deal with, or otherwise relate to any 1 or more of the following matters in connection with the depositor compensation scheme:

- (a) making available to the Bank the information that the Bank considers is necessary or desirable for the performance or exercise of its functions, powers, or duties under **Part 6** (including information about the size and composition of protected deposits and information about investors to determine actual or potential entitlements to compensation under that Part):
- (b) gathering the information referred to in **paragraph (a)** (for example, requiring deposit takers to gather information from investors to identify whether those investors are large under **section 185(2) and (3)**):
- (c) facilitating the Bank's ability to provide entitlements to compensation to, or on account of, eligible investors under **Part 6** as soon as practicable after a specified event (for example, to enable the Bank to quickly and accurately identify eligible investors and protected deposits in connection with a specified event):
- (d) determining whether an entity is controlled by a person for the purposes of **section 185(2)**.

82 Covered bonds and securitisation

A standard may regulate, deal with, or otherwise relate to any 1 or more of the following in connection with covered bonds or other securitisation arrangements:

- (a) information that must be provided to the Bank for the purposes of **sub-part 10 of Part 7**:
- (b) requirements in relation to covered bonds for the purposes of **section 387(2)(g)**:
- (c) limits on the proportion of property that may be beneficially owned by a person (for example, a special purpose vehicle) that grants, or may grant, a security interest in its property for the benefit of a holder of a covered bond:
- (d) restrictions or prohibitions on the property to which a covered bond or any other securitisation arrangement may relate:
- (e) restrictions or prohibitions on who may be a party to a covered bond or other securitisation arrangement:
- (f) any other requirements relating to the terms and conditions of covered bonds or other securitisation arrangements.

83 Disclosure of information

- (1) A standard may regulate, deal with, or otherwise relate to the disclosure of information to the Bank or the public, or both (a **disclosure standard**).
- (2) A disclosure standard may (without limitation)—
 - (a) provide for when and how a disclosure document must be published, provided, or otherwise made available; and
 - (b) provide to whom the disclosure document must be published, provided, or otherwise made available (for example, the Bank, the public, or a particular class of the public); and
 - (c) prescribe the information that must, or must not, be disclosed in the disclosure document, including requiring the disclosure of information about any of the following in connection with a licensed deposit taker or licensed deposit taker group:
 - (i) governance and other corporate matters:
 - (ii) financial matters (for example, the deposit taker's financial condition and performance):
 - (iii) risk exposure and risk management:
 - (iv) prudential matters:
 - (v) any other matters relating to the business, operation, and management of the deposit taker or licensed deposit taker group; and
 - (d) prohibit or restrict the use in a disclosure document of prescribed words, information, sounds, images, graphics, or other matters; and
 - (e) prescribe requirements for preparing and presenting financial information; and

- (f) prescribe requirements as to the layout or method of presentation of disclosure documents (including the length of a disclosure document and of the parts of a disclosure document, the size of type used, and when information may be incorporated by reference); and
 - (g) prescribe the documents that must, or must not, accompany a disclosure document.
- (3) In this section, **disclosure document** means the document or other information that must be published, provided, or otherwise made available under a disclosure standard.

84 Contingency and recovery plans

A standard may regulate, deal with, or otherwise relate to contingency and recovery plans, including 1 or more of the following matters:

- (a) the purposes for which a deposit taker must have those plans (for example, to ensure that a deposit taker is reasonably prepared in the event of a resolution under **subparts 4 to 8 of Part 7**):
- (b) the contents of those plans, for example, the scenarios the plans must cover and the strategies and methods that must be included in the plans for dealing with those scenarios:
- (c) the persons responsible for maintaining, activating, or implementing those plans:
- (d) the notifying of the Bank of the activation of those plans:
- (e) the arrangements for obtaining the human, technological, financial, and other resources needed to activate and implement those plans:
- (f) the reviewing, updating, or testing of those plans:
- (g) changes to those plans (including when the Bank requires a change to be made).

85 Other matters

- (1) A standard may regulate, deal with, or otherwise relate to 1 or more of the following matters:

Outsourcing

- (a) arrangements for any business, or functions relating to any business, of a deposit taker to be carried on by any person other than the deposit taker:

Significant transactions

- (b) when a transaction is a significant transaction in respect of which approval is required under **subpart 5 of Part 2** and when a part of a business is material for the purposes of **section 39**:

Restrictions or prohibitions on activities

- (c) restrictions or prohibitions on either or both of the following:

- (i) the activities that a deposit taker may carry out other than in their capacity as a deposit taker:
- (ii) the activities that a deposit taker (other than an overseas person) may carry out outside New Zealand:

Internal controls and internal assurance function

- (d) internal controls and assurance, including—
 - (i) internal controls in connection with organisational structure, accounting systems, checks and balances, and safeguarding property; and
 - (ii) the review and assessment of the adequacy and effectiveness of internal controls; and
 - (iii) the performance of an independent and effective internal assurance function:

Matters prescribed in regulations

- (e) any other matters that may be prescribed in the regulations.
- (2) In this section, **internal assurance function** includes—
- (a) assessing policies, processes, and internal controls; and
 - (b) providing assurance that policies and processes are being complied with.

Bank's approval may be required

86 Standards may require Bank's approval

- (1) A standard may impose a requirement for the Bank's approval in connection with a matter referred to in any of **sections 72 to 85**.

Examples

Standard relating to capital

A standard may require the Bank's approval relating to capital recognition, capital repayment, and methodologies for calculating capital adequacy.

Standard relating to overseas activities

A standard may require a deposit taker to obtain the Bank's approval before establishing an overseas branch or subsidiary.

- (2) If a standard provides for the Bank's approval,—
- (a) the standard must set out an appropriate manner for the Bank to decide on whether it will give its approval and on any conditions of the approval (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding on those matters); and
 - (b) a request for approval must be made in the manner specified by the Bank.

- (3) A contravention of a condition of the Bank's approval must be treated as being a contravention of the standard that imposed the requirement for the Bank's approval.

Conditions

87 Standards may provide for matters to be specified by conditions

- (1) The purpose of this section is to provide flexibility to allow the requirements or other matters in standards to be set in a manner that takes into account the circumstances of particular deposit takers.
- (2) A standard may provide for a requirement or other matter to be specified by a condition of a licence if the Bank, after having regard to the considerations under **subsection (3)**, is satisfied as referred to in **subsection (4)**.

Example

A standard specifies a range of quantitative capital requirements and provides for the requirements that apply to a particular deposit taker to be set within that range in the conditions of the deposit taker's licence.

- (3) The Bank must have regard to—
- (a) the purpose of this section; and
 - (b) whether the requirement or other matter would be more appropriately dealt with in standards only (rather than being specified by a condition of a licence).
- (4) The Bank must be satisfied that the standard—
- (a) sets an appropriate range or limit within which the requirement or matter may be specified by the condition; or
 - (b) sets out an appropriate manner for the Bank to decide on the terms of the condition (for example, by specifying the matters that the Bank must have regard to, or be satisfied of, when deciding what condition is to apply).

Subpart 3—Directors' due diligence duty

88 Duty of directors of licensed deposit takers

- (1) Every director of a licensed deposit taker must exercise due diligence to ensure that the deposit taker complies with its prudential obligations.
- (2) For the purposes of this section, the director must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances, taking into account (without limitation)—
- (a) the size and nature of the business of the deposit taker; and
 - (b) the position of the director and the nature of the responsibilities undertaken by the director.

- (3) See **subpart 2 of Part 5**, which provides for a court to impose a pecuniary penalty for a contravention of the duty under this section.

Compare: Compare: 2015 No 70 s 44

89 Meaning of due diligence

In this subpart, **due diligence** includes taking reasonable steps to ensure that the deposit taker—

- (a) requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with the prudential obligations; and
- (b) has in place methods for systematically identifying deficiencies in the effectiveness of the procedures for compliance; and
- (c) promptly remedies any deficiencies discovered.

90 Prohibition on indemnities or insurance

- (1) A licensed deposit taker, or an associated person, must not indemnify, or directly or indirectly effect insurance for, a director of the deposit taker in respect of—

- (a) liability for any breach of **section 88**; or
- (b) costs incurred by the director in defending or settling any claim or proceeding relating to that liability.

- (2) An indemnity given in breach of this section is void.

- (3) This section is subject to **sections 91 and 92**.

- (4) In this section and **sections 91 and 92**,—

director includes a former director

effect insurance includes to pay, whether directly or indirectly, the costs of the insurance

indemnify includes to relieve or excuse from liability, whether before or after the liability arises.

91 Permitted indemnities for certain liabilities or costs

- (1) A licensed deposit taker, or an associated person, may, if expressly authorised by its constitution, indemnify a director of the deposit taker for any costs incurred by that person in defending or settling a proceeding that relates to liability of a kind referred to in **section 90(1)(a)** if—

- (a) judgment is given in the director's favour; or
- (b) the proceeding is discontinued.

- (2) A licensed deposit taker or an associated person may, if expressly authorised by its constitution, indemnify a director of the deposit taker in respect of—

- (a) liability of a kind referred to in **section 90(1)(a)** (not being a liability that arises out of a failure to act in good faith when acting in the capacity as a director); or
- (b) costs incurred by that director in defending or settling any claim or proceeding relating to any such liability.

92 Permitted insurance for certain liability or costs

- (1) A licensed deposit taker, or an associated person, may, if expressly authorised by its constitution and with the prior approval of its board of directors, effect insurance for a director of the deposit taker in respect of—
 - (a) liability of a kind referred to in **section 90(1)(a)**; or
 - (b) costs incurred by that director in defending or settling any claim or proceeding relating to that liability.
- (2) The directors of the licensed deposit taker, or of an associated person, who vote in favour of authorising the insurance must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the deposit taker or associated person (as the case may be).
- (3) The director who is insured is personally liable to the deposit taker or associated person for the cost of effecting insurance if—
 - (a) **subsection (2)** has not been complied with in effecting the insurance; or
 - (b) reasonable grounds did not exist for the opinion set out in the certificate given under **subsection (2)**.
- (4) However, **subsection (3)** does not apply to the extent that the insurance was fair to the deposit taker or associated person at the time the insurance was effected.

93 Details of indemnity or insurance must be entered in interests register

The board of a licensed deposit taker or an associated person must ensure that details of any indemnity given to, or insurance effected for, any director under **section 91 or 92** are promptly entered in an interests register.

Part 4

Supervision of deposit takers

Bank to undertake prudential supervision

94 Prudential supervision

The Bank must in accordance with this Part undertake prudential supervision of licensed deposit takers.

Subpart 1—Bank’s information-gathering power

95 Bank may require person to supply information for purposes of Act

- (1) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may, by notice to any person, require the person to do 1 or more of the following:
 - (a) give to the Bank any information, or class of information, that is specified in the notice:
 - (b) produce for inspection any documents, or class of documents, that are specified in the notice:
 - (c) if necessary, reproduce, or assist in reproducing, in usable form, information recorded or stored in those documents.
- (2) The information required under **subsection (1)(a)** must be given—
 - (a) for the periods, and in the form (including consolidated form), that may be specified in the notice; and
 - (b) in respect of the business, operation, or management of a person who is or may be any of the following:
 - (i) a deposit taker or any other financial service provider:
 - (ii) an associated person of a deposit taker:
 - (c) in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent, or intermediary; and
 - (d) within the period, and otherwise in the manner, that is specified in the notice.
- (3) The person must comply with **subsection (1)(b) and (c)** within the period, and otherwise in the manner, that is specified in the notice.
- (4) The Bank may take copies of any documents produced for inspection under **subsection (1)**.
- (5) For the purposes of this Act, a reference to matters relating to the **business, operation, or management** of a person includes the corporate, financial, or prudential matters of the person.

96 Infringement offence for complete failure to give information or produce documents within required time frame

- (1) A person commits an infringement offence if—
 - (a) a notice under **section 95** requires the person to—
 - (i) give to the Bank information, or a class of information, that is specified in the notice; or
 - (ii) produce for inspection documents, or a class of documents, that are specified in the notice; and

- (b) the person contravenes **section 95** by giving no information, and producing no documents for inspection, within the period that is specified in the notice.
- (2) A person who commits the infringement offence is liable to—
 - (a) an infringement fee of \$10,000; or
 - (b) a fine imposed by a court not exceeding \$25,000.
- (3) This section does not limit **section 97**.

97 Offence for failing to supply information

- (1) A person commits an offence if they refuse or fail, without reasonable excuse, to comply with a notice under **section 95**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in the case of a body corporate, a fine not exceeding \$500,000.

98 Person required to give information has same privileges as witnesses in court

A person who is required to give information under this subpart has the same privileges in relation to that duty as witnesses have in a proceeding before a court.

99 Bank may require report relating to licensed deposit taker or associated person

- (1) The Bank may, by notice to a licensed deposit taker, require the deposit taker to give the Bank a report or series of reports on any matters relating to the business, operation, or management of either or both of the following:
 - (a) the deposit taker;
 - (b) any associated person of the deposit taker.
- (2) The report or series of reports must be prepared by a person approved by the Bank.
- (3) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be given.
- (4) The licensed deposit taker must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

100 Associated person must supply information

An associated person of the licensed deposit taker must, if required to do so by the deposit taker, supply information relating to the person in order to enable the deposit taker to comply with a notice under **section 99**.

101 Bank may require report to be published

- (1) The Bank may, by notice to a licensed deposit taker, require the deposit taker to publish a report or series of reports under **section 99** (whether in whole or in part).
- (2) The notice must contain a statement of the reasons why the Bank wants the report or series of reports to be published.
- (3) The licensed deposit taker must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

102 Offences for failing to give or publish report

A licensed deposit taker or an associated person that intentionally or recklessly contravenes a requirement under any of **sections 99 to 101** commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in the case of a body corporate, a fine not exceeding \$500,000.

103 Requirement that information be audited or reviewed

- (1) The Bank may, by notice, require a licensed deposit taker or other person to obtain an audit or a review of any information that the deposit taker or other person is required to give to the Bank under—
 - (a) this subpart; or
 - (b) an applicable standard or a condition; or
 - (c) any other prudential obligation.
- (2) The audit or review must be carried out by an auditor, or other person, approved by the Bank.
- (3) The licensed deposit taker or other person must comply with the notice within the period, and otherwise in the manner, that is specified in the notice.

104 Offences for failing to obtain audit or review

A licensed deposit taker or other person that, without reasonable excuse, contravenes a requirement under **section 103** commits an offence and is liable on conviction to,—

- (a) in the case of an individual, a fine not exceeding \$50,000;
- (b) in the case of a body corporate, a fine not exceeding \$500,000.

105 Disclosure of information to Bank by auditors

- (1) This section and **sections 106 to 108** apply to a person (an **auditor**) who holds, or at any time has held, office as required by any legislation, as an auditor of a licensed deposit taker or of an associated person of a licensed deposit taker.

- (2) An auditor must disclose to the Bank information relating to the affairs of the licensed deposit taker or associated person obtained in the course of holding office as auditor if, in the opinion of the auditor,—
- (a) the licensed deposit taker or associated person—
 - (i) is failing to comply with section 455 of the FMCA or any other legislation that requires proper accounting records to be kept; or
 - (ii) is failing to comply with subpart 3 of Part 7 of the FMCA or any other legislation that relates to the preparation, audit, lodgement, or filing of financial statements; or
 - (iii) is in serious financial difficulties; or
 - (iv) is, or has been, operating fraudulently or recklessly; and
 - (b) the disclosure of the information is likely to assist, or be relevant to, the performance or exercise by the Bank of its functions, powers, or duties under this Act.

106 Auditor to inform of intention to disclose

An auditor must, before disclosing any information to the Bank under **section 105**, take reasonable steps to inform the licensed deposit taker or associated person of the intention to disclose the information and the nature of the information.

107 Protection of auditor

- (1) No civil, criminal, or disciplinary proceedings lie against an auditor arising from the disclosure in good faith of information to the Bank under **section 105**.
- (2) No tribunal, body, or authority having jurisdiction in respect of the professional conduct of an auditor may make any order against, or do any act in relation to, the auditor in respect of the disclosure referred to in **subsection (1)**.

108 Admissibility of information

- (1) No information received by the Bank under **section 105** is admissible in evidence in any proceedings against the auditor concerned.
- (2) This section does not limit the admissibility of any information obtained in any other way.

Subpart 2—On-site inspection

109 Purpose

The purpose of this subpart is to facilitate the Bank's ability to undertake prudential supervision of licensed deposit takers.

110 Bank may conduct on-site inspection

- (1) The Bank may enter and remain at any relevant place to carry out an on-site inspection of a licensed deposit taker if the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Part.
- (2) The Bank—
 - (a) may exercise the power only at a reasonable time and in a reasonable manner; but
 - (b) is not required to give notice of the exercise of the power.
- (3) In this subpart, **relevant place**, in relation to a licensed deposit taker, means any place of business of the deposit taker.

111 Person may be required to answer questions or give information

- (1) During an on-site inspection, the Bank may require any employee, director, or agent of the licensed deposit taker to—
 - (a) answer questions relating to its records and documents; and
 - (b) give all other information that the Bank may reasonably require for the purpose of the inspection.
- (2) Before the Bank requires a person to act under **subsection (1)**, the person must be informed of the effect of **section 112**.

112 Person required to answer questions or give information has same privileges as witnesses in court

A person who is required to answer questions, or give information, under this subpart has the same privileges in relation to that duty as witnesses have in a proceeding before a court.

113 Offence relating to on-site inspection

- (1) An employee, a director, or an agent of the licensed deposit taker commits an offence if they—
 - (a) refuse or fail, without reasonable excuse, to comply with a requirement under **section 111** to answer any questions or give information; or
 - (b) intentionally or recklessly resist, obstruct, or delay the Bank from carrying out an on-site inspection under this subpart.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in the case of a body corporate, a fine not exceeding \$500,000.

Subpart 3—Reporting duty

114 Licensed deposit taker must monitor compliance

Every licensed deposit taker must ensure that there are in place effective methods for monitoring the licensed deposit taker's compliance with the prudential obligations.

115 Licensed deposit taker must report contraventions

- (1) This section applies if a licensed deposit taker believes that it has contravened, may have contravened, or is likely to contravene a prudential obligation in a material respect.
- (2) The licensed deposit taker must, as soon as practicable after it forms the belief, give the Bank a report containing—
 - (a) details of the belief; and
 - (b) the licensed deposit taker's grounds for the belief; and
 - (c) all other information prescribed by the regulations (if any).

116 Offences for failing to monitor compliance and report contraventions

A licensed deposit taker that, without reasonable excuse, contravenes **section 114 or 115** commits an offence and is liable on conviction to a fine not exceeding \$500,000.

117 Restriction on use of report

A report given by a licensed deposit taker under this subpart is not admissible as evidence in a civil or criminal proceeding against the deposit taker, except in a criminal proceeding that concerns the falsity of the report.

Subpart 4—Remedial notices and plans

118 Bank may require licensed deposit taker to take action in relation to contravention

- (1) This section applies if—
 - (a) a licensed deposit taker has given the Bank a notice under **subpart 3**; or
 - (b) the Bank otherwise has reasonable grounds to believe that a licensed deposit taker has contravened, may have contravened, or is likely to contravene a prudential obligation.
- (2) The Bank may, by notice (a **remedial notice**), require the deposit taker—
 - (a) to take specified actions within a specified period—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur; or

- (b) to give to the Bank a plan (a **remedial plan**).
- (3) The remedial plan must set out the following:
 - (a) actions that the deposit taker will take—
 - (i) to address the cause, or to remedy or mitigate the consequences, of the contravention; or
 - (ii) to ensure that the contravention does not occur or recur:
 - (b) an appropriate timetable for taking the proposed actions to ensure that they are taken as soon as practicable:
 - (c) steps that the deposit taker will take to keep the plan current:
 - (d) any other matters required by the remedial notice.
- (4) The deposit taker must comply with a remedial notice in the manner specified in the notice.

119 Bank's consideration of remedial plan

- (1) If a licensed deposit taker gives a remedial plan to the Bank, the Bank may—
 - (a) approve the remedial plan; or
 - (b) require the deposit taker to amend the remedial plan and resubmit it to the Bank by a specified date for approval or rejection; or
 - (c) reject the remedial plan.
- (2) Nothing in this section limits the Bank's power to issue a further remedial notice under **section 118(2)(a)**.

120 Bank may require amendment of remedial plan

- (1) This section applies if—
 - (a) the Bank acts under **section 119(1)(b)**; or
 - (b) the Bank at any other time requires the deposit taker to amend a remedial plan that has been approved by the Bank.
- (2) The licensed deposit taker must, within the time and otherwise in the manner specified by the Bank, give to the Bank an amended remedial plan that addresses the matter required to be amended.

121 Remedial plan may also be amended with Bank's approval

- (1) A licensed deposit taker may also, at any time, amend a remedial plan that has been approved by the Bank with the Bank's approval.
- (2) This section does not limit **section 120**.

122 Licensed deposit taker must comply with remedial plan

If the Bank approves a remedial plan (whether as first provided or after amendment), the licensed deposit taker must take all reasonable steps to comply with the remedial plan.

123 Other provisions relating to remedial notices and plans

- (1) Neither a remedial notice nor a remedial plan may require the licensed deposit taker to pay compensation.
- (2) A remedial notice must set out the reasons for which it is given.

124 Offence for contravention of remedial notice, failure to give amended remedial plan, or failure to take steps to comply with remedial plan

A licensed deposit taker commits an offence if it intentionally or recklessly contravenes **section 118, 120, or 122** and is liable on conviction to a fine not exceeding \$2,500,000.

Subpart 5—Investigations

125 Bank may appoint investigator

- (1) This section applies if the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (a) a deposit taker or other person has failed to comply with **subpart 1 of Part 2** (requirements to be licensed and not to hold out):
 - (b) a licensed deposit taker or other person has contravened, is contravening, or is likely to contravene a prudential obligation:
 - (c) a licensed deposit taker has been or is operating fraudulently or recklessly.
- (2) If the Bank considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act, the Bank may appoint, in writing, a person (an **investigator**) to carry out an investigation of the affairs of a person referred to in **subsection (1)**.
- (3) The investigator must be an employee of the Bank or any other person that the Bank is satisfied is suitably qualified.
- (4) This subpart does not limit the Bank's information-gathering powers under **subpart 1** of this Part.

126 Power to obtain information

- (1) An investigator may, for the purposes of carrying out an investigation of the affairs of a person (A) referred to in **section 125(1)**, do 1 or more of the following:
 - (a) by notice, require A, or any director or employee of A, or any other person, to—

- (i) give any information, or class of information, relating to the business, operation, or management of A; or
 - (ii) produce for inspection any documents, or class of documents, of or relating to the business, operation, or management of A that are in the custody or under the control of A or the director, employee, or other person; or
 - (iii) if necessary, reproduce, or assist in reproducing, in usable form, any information recorded or stored in those documents:
- (b) take copies of any documents produced for inspection under **paragraph (a)**:
 - (c) require any director or employee of A, or any other person, to answer any question relating to the business, operation, or management of A.
- (2) Any questioning under **subsection (1)(c)** may be carried out by the investigator, or a barrister or solicitor acting on behalf of the investigator, who may require the person who is subject to the questioning to take an oath or make an affirmation.
 - (3) An investigator who exercises any powers under this section must, if requested, produce the instrument of the investigator's appointment.

127 Power to enter and search place

- (1) An investigator may, for the purposes of carrying out an investigation of the affairs of a person (A) referred to in **section 125(1)**, enter and search any place if—
 - (a) the occupier of the place consents; or
 - (b) the investigator obtains a warrant under this section.
- (2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) who, on an application made by an investigator in the manner provided in subpart 3 of Part 4 of that Act, is satisfied that there are reasonable grounds for believing that 1 or more of the following apply may issue a warrant to the investigator:
 - (a) A has contravened, is contravening, or is likely to contravene a prudential obligation:
 - (b) it is necessary or desirable for the purpose of determining whether to exercise any powers conferred on the Bank under this Act that an investigation of the affairs of A should be carried out.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except for sections 118 and 119) apply.

128 Offences in relation to investigations

- (1) A person commits an offence if—

- (a) they intentionally or recklessly hinder, obstruct, or delay an investigator in carrying out an investigation under this subpart; or
 - (b) without reasonable excuse, they contravene a requirement of a notice given under **section 126**; or
 - (c) without reasonable excuse, they refuse to answer any question put to them under **section 126** or to take an oath or make an affirmation when required to do so under that section.
- (2) A person who commits an offence against this section is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Subpart 6—Confidentiality orders

129 Bank may make confidentiality order

- (1) The Bank may make an order prohibiting the publication or communication of any information—
- (a) that discloses, or is reasonably likely to disclose, the exercise of a power under this Act; or
 - (b) that is provided or obtained in connection with any inquiry, investigation, or other proceeding of the Bank under this Act.
- (2) The Bank may make the order on its own initiative or on the application of any person.
- (3) The Bank may make the order on the terms and conditions (if any) that it thinks fit.
- (4) The prohibition in the order has effect for the period specified in the order (which must not exceed 3 years).
- (5) At the end of the period specified in the order, the Official Information Act 1982 and the Privacy Act 2020 apply to any information that was the subject of the order.

130 Disclosure with Bank’s consent

- (1) A confidentiality order does not prohibit the disclosure of any information by a person if the disclosure is with the Bank’s consent.
- (2) The Bank’s consent must not be unreasonably withheld.
- (3) It is reasonable for the Bank to withhold its consent if it considers that the disclosure of the information would be likely to—
- (a) prejudice the maintenance of the law, including the prevention, investigation, and detection of contraventions of any prudential obligations; or

- (b) unreasonably prejudice the commercial position of a deposit taker; or
 - (c) be inconsistent with the purposes of this Act.
- (4) **Subsection (3)** does not limit the circumstances in which it may be reasonable for the Bank to withhold its consent.

131 Offence for contravention of confidentiality order

- (1) A person who intentionally or recklessly publishes or communicates information in contravention of a confidentiality order commits an offence.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Subpart 7—Power to require warning to be disclosed

132 Bank may require its warning to be disclosed

- (1) This section applies if—
 - (a) the Bank has reasonable cause to suspect that 1 or more of the following apply:
 - (i) a licensed deposit taker or other person has contravened, is contravening, or is likely to contravene a prudential obligation;
 - (ii) a licensed deposit taker has been or is operating fraudulently or recklessly; and
 - (b) the Bank has issued a warning to the licensed deposit taker or other person (A) about the matter referred to in **paragraph (a)**.
- (2) The Bank may, by notice given to A, order A, or all or any associated persons of A, or both to do 1 or more of the following:
 - (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of A or any of those associated persons;
 - (b) ensure that every communication of the kind that is specified in the order and that is distributed by or on behalf of A or any of those associated persons contains a copy of the warning in a prominent position or is accompanied by a copy of the warning;
 - (c) ensure that any document of the kind that is specified in the order and that is required by any relevant legislation to be given by A, or any of those associated persons, to another person contains, or is amended to contain, a copy of the warning in a prominent position or is accompanied by a copy of the warning.
- (3) In this section, **relevant legislation** means any of the following:

- (a) prudential legislation;
- (b) financial markets legislation within the meaning of section 4 of the Financial Markets Authority Act 2011;
- (c) the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

133 Procedural matters relating to order

The Bank may make an order under this subpart only if—

- (a) the Bank gives A at least 3 working days' notice of the following matters before the Bank exercises the power:
 - (i) that the Bank may make an order; and
 - (ii) the reasons why it is considering exercising that power; and
- (b) the Bank gives A or A's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

134 Other provisions relating to order

- (1) The Bank may make an order under this subpart on the terms and conditions (if any) that it thinks fit.
- (2) If the order extends to associated persons of A, the order may require—
 - (a) all, or any specified class or classes, of the associated persons to comply with the order (including associated persons that may be incorporated or formed after the date of the order); and
 - (b) A to provide a copy of the order to all or any of those associated persons.
- (3) For the purpose of **subsection (2)**, the order is not required to refer to the associated persons by name.

135 Bank must give notice of orders

If the Bank makes an order under this subpart,—

- (a) it must, immediately after exercising the power, give notice on the Bank's Internet site of—
 - (i) the reasons for making the order; and
 - (ii) the terms and conditions of the order (if any); and
 - (iii) any other information the Bank thinks relevant in the circumstances; and
- (b) it may give public notice by any other means of the matters in **paragraph (a)**; and
- (c) it may notify any other person of the matters in **paragraph (a)**.

136 Offence of failing to comply with order

- (1) A person to whom an order under this subpart applies commits an offence if the person refuses or fails, without reasonable excuse, to comply with the order.
- (2) If an order under this subpart applies to an associated person of a licensed deposit taker, the associated person commits an offence if the associated person—
 - (a) knew, or ought reasonably to have known, that the order applied to the associated person; and
 - (b) refuses or fails, without reasonable excuse, to comply with the order.
- (3) A person who commits an offence against this section is liable on conviction to,—
 - (a) in the case of an individual, a fine not exceeding \$50,000;
 - (b) in the case of a body corporate, a fine not exceeding \$500,000.

Subpart 8—Access to information by overseas supervisor**137 Access to information by overseas supervisor**

- (1) For the purpose of an overseas supervisor's performance or exercise of its supervisory functions, powers, or duties, the Bank may authorise the overseas supervisor to do either or both of the following:
 - (a) conduct an on-site inspection of a licensed deposit taker;
 - (b) require any licensed deposit taker to give to the overseas supervisor any information relating to that person.
- (2) An authorisation may be—
 - (a) granted for the period or periods that the Bank thinks fit; and
 - (b) varied, revoked, or amended by the Bank.
- (3) This subpart has effect despite anything to the contrary in any other legislation or rule of law.

138 Bank must give notice of authorisation

The Bank must give notice to a licensed deposit taker if the Bank—

- (a) grants an authorisation in relation to that person; or
- (b) varies, revokes, or amends that authorisation.

139 Authorisation may relate to particular customer or client

The information that an overseas supervisor may be authorised to obtain under this subpart may include, without limitation, information about the affairs of a particular customer or client of the licensed deposit taker.

140 Restriction on authorisation

The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information obtained or required by the overseas supervisor.

141 Duties of licensed deposit taker

A licensed deposit taker that is given a notice under **section 138** must comply with the notice by, as the case may be,—

- (a) permitting the overseas supervisor to conduct an on-site inspection of the deposit taker; or
- (b) giving the overseas supervisor the required information within the time, and in the manner, specified in the notice.

142 Offence for contravening duties

A licensed deposit taker commits an offence if, without reasonable excuse, it contravenes **section 141**, and is liable on conviction to a fine not exceeding \$500,000.

Subpart 9—Miscellaneous**143 Effect of final decision that exercise of powers under section 95 or 126 unlawful**

- (1) In any case where it is declared in a final decision given in a proceeding in respect of the exercise of powers conferred by a relevant section that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,—
 - (a) the Bank or investigator must ensure that, as soon as is reasonably practicable after the decision of the court is given,—
 - (i) any information supplied by a person under the relevant section is destroyed;
 - (ii) any documents or extracts from documents obtained pursuant to an inspection made under the relevant section are returned to the person previously having possession of those documents or previously having them under their control, and any copies of those documents or extracts are destroyed;
 - (iii) any information derived from or based upon any such information or documents or extracts is destroyed;
 - (b) no information supplied by a person under a relevant section, and no documents or extracts from documents obtained under a relevant section,—
 - (i) are admissible in evidence in any proceedings:

- (ii) may be used in connection with the exercise of any power conferred by the Bank or an investigator.
- (2) In this section, **relevant section** means **section 95 or 126**.

Part 5 Enforcement

Subpart 1—Power to accept undertakings

144 Bank may accept voluntary undertaking

The Bank may accept a written undertaking from a licensed deposit taker or other person about a matter in relation to which the Bank is performing or exercising any of its functions, powers, or duties under this Act.

145 What undertaking may include

An undertaking may include (without limitation) an undertaking from the deposit taker or person to—

- (a) pay compensation to any person; or
- (b) take specified action to address the cause, or to remedy or mitigate the consequences, of a contravention (or likely contravention) of a prudential obligation, or to ensure that the contravention does not occur or recur; or
- (c) pay an amount to the Bank in lieu of a pecuniary penalty.

146 Consequences of accepting undertaking

- (1) If the Bank accepts an undertaking,—
- (a) no criminal proceedings may be brought or continued by the Bank against the deposit taker or person, or any other person, in relation to a contravention to which the undertaking relates;
 - (b) no application under **subpart 2** may be made or continued against the deposit taker or associated person, or any other person, in relation to the contravention to which the undertaking relates.
- (2) **Subsection (1)** stops applying if the undertaking is withdrawn.

147 Undertakings that include payment of money

If the undertaking includes the payment of an amount in lieu of a pecuniary penalty,—

- (a) the amount must be paid into a Crown Bank Account (after deducting the Bank's costs incurred in connection with the matter); and
- (b) the Bank must give notice of the payment on the Bank's Internet site, including—

- (i) a statement of the amount to be paid; and
- (ii) a brief description of the contravention to which the undertaking relates.

148 Licensed deposit taker or other person may withdraw or amend undertaking

The licensed deposit taker or other person may withdraw or amend the undertaking only with the Bank's consent.

149 Enforcement of undertakings

- (1) The Bank may apply to the High Court for an order under this section if the Bank—
 - (a) has accepted an undertaking under this subpart; and
 - (b) is satisfied that a licensed deposit taker or other person has contravened the undertaking.
- (2) The court may make an order directing the deposit taker or other person to do 1 or more of the following:
 - (a) comply with the undertaking;
 - (b) pay to the Crown an amount representing (wholly or partly) any financial benefit that the person has received because of the contravention of the undertaking;
 - (c) pay compensation to any person.
- (3) The order may include consequential directions.

150 Court must take into account certain matters

The court must, before making the order, take into account the following:

- (a) the nature and extent of the contravention of the undertaking;
- (b) the nature and extent of any loss or damage incurred by any person as a result of the contravention;
- (c) the circumstances in which the contravention occurred (including whether it was intentional, inadvertent, or caused by negligence);
- (d) any other matters the court considers relevant.

Subpart 2—Pecuniary penalty

Court may make pecuniary penalty order

151 When court may make pecuniary penalty orders

- (1) The court may, on the application of the Bank, order a person (A) to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that A has—

- (a) contravened an applicable standard; or
 - (b) been involved in a contravention of an applicable standard; or
 - (c) contravened a condition of its licence; or
 - (d) contravened **section 88** (directors' due diligence duty).
- (2) In this subpart,—
- (a) **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty:
 - (b) a person is **involved in a contravention** of an applicable standard if the person—
 - (i) has aided, abetted, counselled, or procured the contravention; or
 - (ii) has induced, whether by threats or promises or otherwise, the contravention; or
 - (iii) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (iv) has conspired with others to effect the contravention.

Amount of pecuniary penalty

152 Maximum amount of pecuniary penalty

- (1) The maximum amount of a pecuniary penalty that a body corporate may be ordered to pay for a contravention, or involvement in a contravention, of an applicable standard or a condition of a licence is the greater of—
 - (a) \$5,000,000; and
 - (b) 0.1% of total assets of the body corporate and its subsidiaries (if any) as at the balance date of the accounting period that precedes the time at which the contravention first occurs (as specified in the body corporate's financial statements or the group financial statements of the body corporate and those subsidiaries).
- (2) The maximum amount of a pecuniary penalty that a natural person may be ordered to pay for a contravention of **section 88**, or involvement in a contravention of an applicable standard, is \$1,000,000.

153 Considerations for court

In determining whether to make an order, and the amount of any pecuniary penalty to be paid, the court must have regard to the following matters:

- (a) the extent to which A's conduct undermines the purposes of this Act:
- (b) any loss or damage caused by A's conduct:
- (c) whether A has taken steps to avoid or mitigate any adverse effects arising from A's conduct:
- (d) whether A's conduct was intentional or reckless:

- (e) the circumstances of A's conduct:
- (f) whether A has previously engaged in similar conduct:
- (g) any other matters the court considers relevant.

Defences

154 Defences for person that contravenes prudential obligation

- (1) This section applies to a proceeding under this subpart against A for a contravention of an applicable standard, a condition of a licence, or **section 88**.
- (2) It is a defence for A to prove that the contravention was due to reasonable reliance on information provided by another person, other than a director, an employee, or an agent of A.
- (3) It is also a defence for A to prove that—
 - (a) the contravention was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
 - (b) A took reasonable precautions and exercised due diligence to avoid the contravention.
- (4) A's conduct must still be treated as contravening an applicable standard, a condition of a licence, or **section 88** even if the conduct does not lead to any liability under this subpart because of the availability of a defence.

155 Defence for person that is involved in contravention

- (1) This section applies if—
 - (a) a person (**B**) has contravened an applicable standard; and
 - (b) another person (**C**) is involved in the contravention.
- (2) In a proceeding under this subpart against C for involvement in the contravention, it is a defence if C proves that—
 - (a) C's involvement in the contravention was due to reasonable reliance on information supplied by another person, other than a director, an employee, or an agent of C; or
 - (b) C took all reasonable and proper steps to ensure that B complied with the applicable standard.

*Bank's costs***156 Court must order that recovery from pecuniary penalty be applied to Bank's actual costs**

If the court orders a person to pay a pecuniary penalty, the court must also order that the penalty must be applied first to pay the Bank's actual costs in bringing the proceedings.

*Procedural rules***157 Rules of civil procedure and civil standard of proof apply**

The proceedings under this subpart are civil proceedings and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

158 Limitation

- (1) A proceeding under this subpart may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.
- (2) However, no proceeding under this subpart may be commenced 10 years or more after the matter giving rise to the contravention.
- (3) Section 48(1) and (3) of the Limitation Act 2010 (which relates to fraud) applies with all necessary modifications to the 10-year period referred to in **subsection (2)** as if it were a longstop period.

*Relationship between proceedings and orders***159 Only 1 pecuniary penalty order may be made for same conduct**

If conduct by a person constitutes a contravention, or involvement in the contravention, of 2 or more obligations, proceedings may be brought against that person for the contravention, or involvement in the contravention, of any 1 or more of the obligations, but no person is liable to more than 1 pecuniary penalty order for the same conduct.

160 No pecuniary penalty and criminal penalty for same conduct

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine or to imprisonment under this Act or any other Act for the same conduct.

Subpart 3—Infringement offences**161 Infringement offences**

- (1) A person who is alleged to have committed an infringement offence may—
 - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or

- (b) be issued with an infringement notice under **section 162**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

162 When infringement notice may be issued

The Bank may issue an infringement notice to a person if the Bank believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

163 Revocation of infringement notice before payment made

- (1) The Bank may revoke an infringement notice before—
 - (a) the infringement fee is paid; or
 - (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) The Bank must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any further action as described in **section 161(1)(a) or (b)** against the person to whom the notice was issued in respect of the same matter.

164 What infringement notice must contain

An infringement notice must be in the form prescribed in the regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence;
- (b) the amount of the infringement fee;
- (c) the address of the Bank;
- (d) how the infringement fee may be paid;
- (e) the time within which the infringement fee must be paid;
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
- (g) a statement that the person served with the notice has a right to request a hearing;
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
- (i) any other matters prescribed in the regulations.

165 How infringement notice may be served

- (1) An infringement notice may be served on the person who the Bank believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) Unless the contrary is shown,—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and
 - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first entered an information system that is outside the control of the Bank.

166 Payment of infringement fees

All infringement fees paid for infringement offences must be paid into a Crown Bank Account.

167 Reminder notices

A reminder notice must be in the form prescribed in the regulations and must include the same particulars, or substantially the same particulars, as the infringement notice.

Subpart 4—False declarations and representations**168 False or misleading declarations and representations**

A person (A) must not, for any purpose relating to this Act, either on A's own behalf or on behalf of any other person,—

- (a) either orally or in writing, make a declaration or representation to the Bank or an investigator that A knows, or ought reasonably to have known, is false or misleading in any material particular; or

- (b) give to the Bank or an investigator any information that A knows, or ought reasonably to have known, is false or misleading in any material particular; or
- (c) give to the Bank or an investigator a document that A knows, or ought reasonably to have known, is not genuine; or
- (d) otherwise publish or make available any information that A knows, or ought reasonably to have known, contains any information that is false or misleading in any material particular.

169 Offence for making false or misleading declaration or representation

A person commits an offence if they contravene **section 168** and are liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
- (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

170 Liability of directors if licensed deposit taker or associated person commits offence

If a licensed deposit taker or an associated person is convicted of an offence against **section 169**, every director of the deposit taker or associated person is guilty of the offence if it is proved—

- (a) that the act that constituted the offence took place with the director's authority, permission, or consent; and
- (b) that the director—
 - (i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and
 - (ii) failed to take all reasonable steps to prevent or stop it.

Subpart 5—Ban ordered by District Court

171 Power to ban certain persons from participating in deposit taking business

- (1) The District Court may, on the application of the Bank, make an order in respect of a person under this subpart if the District Court considers that the person—
 - (a) has engaged in an act, an omission, or a course of conduct that constitutes serious wrongdoing and that the person is not a fit and proper person to participate in a deposit taking business in 1 or more of the ways described in **section 172**; or
 - (b) has failed to comply with an order under **section 28**; or
 - (c) as a director of a licensed deposit taker, has persistently or seriously failed to comply with **section 88** (directors' due diligence duty); or

- (d) is a director of a licensed deposit taker that has persistently or seriously contravened any prudential obligation, and the person has persistently failed to take reasonable steps to prevent or stop the deposit taker's contravention; or
 - (e) is prohibited from participating in a deposit taking business in 1 or more of the ways specified in **section 172(a) to (f)** under an order made, or a notice given, under a law of a country, State, or territory outside New Zealand.
- (2) Every application to the District Court under this section must be made by an originating application.

172 Type of order

The order is an order banning a person from being or doing 1 or more of the following:

- (a) being a director of a licensed deposit taker:
- (b) being concerned or taking part in the management of a licensed deposit taker:
- (c) being a shareholder of a licensed deposit taker:
- (d) being an employee or other agent of a licensed deposit taker:
- (e) acting under a contract for services with a licensed deposit taker:
- (f) otherwise participating in a business of a licensed deposit taker in any other way (whether paid or unpaid).

173 Other provisions relating to order

- (1) An order may be—
- (a) made even though the person concerned may be criminally or civilly liable for the matters on the grounds of which the order is to be made; and
 - (b) permanent or for a specified time; and
 - (c) subject to the terms and conditions that the District Court thinks fit; and
 - (d) cancelled or varied at any time by the District Court.
- (2) The District Court may make any order in the matter as to costs and otherwise as it thinks fit.
- (3) As soon as practicable after an order is made, the Registrar of the District Court must send a copy of the order to the Bank.

174 Offence for contravening banning order

A person commits an offence if they intentionally or recklessly contravene an order made under this subpart, and are liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

175 Effect of appeal

A ban under this subpart has effect from the date specified in the order even though an appeal may have been lodged under **section 176**.

176 Appeal to High Court

The Bank or a person to whom an order relates may appeal to the High Court against a decision of the District Court under this subpart.

Subpart 6—Miscellaneous

Attribution of liability

177 State of mind of directors, employees, or agents attributed to body corporate or other principal

- (1) If, in a proceeding under this Act in respect of any relevant conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority, had that state of mind.
- (2) If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any relevant conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of their actual or apparent authority, had that state of mind.
- (3) In this section,—

relevant conduct means conduct in relation to which any provision of this Act applies

state of mind, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Compare: 1986 No 5 s 90(1), (3), (5)

178 Conduct of directors, employees, or agents attributed to body corporate or other principal

- (1) Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:
 - (a) a director, an employee, or an agent of the body corporate, acting within the scope of their actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, an employee, or an agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.

- (2) Conduct engaged in on behalf of a person other than a body corporate (A) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:
- (a) an employee or agent of A acting within the scope of their actual or apparent authority;
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Compare: 1986 No 5 s 90(2), (4)

Miscellaneous

179 General defence for offences

It is a defence to a prosecution for an offence against this Act if the defendant (A) proves that—

- (a) the contravention to which the offence relates was due to—
 - (i) the conduct of another person, other than a director, an employee, or an agent of A; or
 - (ii) an accident or some other cause beyond the control of A and A's directors, employees, and agents; and
- (b) A took reasonable precautions and exercised due diligence to avoid the contravention.

180 Time for filing charging document for certain offences

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 3 years after the date on which the offence was committed.
- (2) Nothing in **subsection (1)** affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.
- (3) In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

181 Jurisdiction of courts in New Zealand

The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences or proceedings under **subpart 5**.

182 Orders to secure compliance

The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

183 General provisions as to court's orders

- (1) A court order under this Act may be made on the terms and conditions the court thinks fit.
- (2) The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

Part 6**Depositor compensation scheme****Subpart 1—Preliminary provisions****184 Additional purpose of this Part**

- (1) The purpose of this Part is to contribute towards protecting and promoting the stability of New Zealand's financial system by—
 - (a) protecting eligible investors to the extent that they are covered by the depositor compensation scheme; and
 - (b) allowing the Depositor Compensation Fund to be used to support a resolution measure undertaken in relation to a licensed deposit taker.
- (2) This section does not limit **section 3**.

185 Interpretation in this Part

- (1) In this Part, unless the context otherwise requires,—**eligible investor**—
 - (a) means a holder of a protected deposit or a person on whose behalf a protected deposit is held (whether or not the debt security was issued to, or subsequently acquired by, the holder of the security); but
 - (b) does not include any of the following:
 - (i) a licensed deposit taker, a licensed insurer, or an operator of a designated FMI;
 - (ii) a large corporation sole, a large body corporate, or a large unincorporated body (*see subsection (2)*);
 - (iii) a government agency;
 - (iv) in relation to a specified event of a licensed deposit taker (**B**), an associated person of B or a director of B;
 - (v) a person of a class that is prescribed by the regulations

fund means the Depositor Compensation Fund established under **section 190**

government agency means any of the following:

- (a) the Crown (as defined in section 2(1) of the Public Finance Act 1989);
- (b) an Office of Parliament (as defined in section 2(1) of the Public Finance Act 1989);
- (c) a Crown entity under section 7(1)(a) to (c) of the Crown Entities Act 2004;
- (d) a local authority (as defined in section 5(1) of the Local Government Act 2002);
- (e) a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986);
- (f) the Bank or a subsidiary of the Bank;
- (g) a company or other organisation named or described in Schedule 4 or 4A of the Public Finance Act 1989;
- (h) the Board of Trustees of the National Provident Fund continued under the National Provident Fund Restructuring Act 1990 (and any company appointed under clause 3(1)(b) of Schedule 4 of that Act)

person—

- (a) has the same meaning as in section 13 of the Legislation Act 2019; and
- (b) includes—
 - (i) a partnership under the Partnership Law Act 2019 (*see section 200*); and
 - (ii) in the case of a trust to which **section 202** applies that has only 1 trustee, the trustee acting in their capacity as trustee;
 - (iii) in the case of a trust to which **section 202** applies that has more than 1 trustee, the trustees acting jointly in their capacity as trustees

quantification time, in relation to a licensed deposit taker (**B**), means the earlier of the following:

- (a) the time at which a liquidator of B is appointed;
- (b) the time specified in a notice in the *Gazette* under **section 188**

relevant arrangement has the meaning set out in **subsection (5)**

scheme means the depositor compensation scheme established by this Part

specified event has the meaning set out in **section 187**

statement of funding approach means the statement of funding approach published under **subpart 7**.

- (2) A person is **large** if at least 1 of the following paragraphs applies:

- (a) as at the last day of each of the 2 most recently completed accounting periods of the person before the date of the specified event, the net assets of the person and the entities controlled by the person exceeded \$5 million;
 - (b) in each of the 2 most recently completed accounting periods of the person before the specified event, the total consolidated turnover of the person and the entities controlled by the person exceeded \$5 million.
- (3) A person that has not completed its first 2 accounting periods is not large under **subsection (2)**.
- (4) Whether an entity is **controlled** by a person must be determined in accordance with standards under **section 81**.
- (5) A protected deposit is held for, or on behalf of, 1 or more persons under a **relevant arrangement** if the deposit—
- (a) is held under a regulated client money or property service (within the meaning of section 431W of the FMCA); or
 - (b) is held in trust under section 87 of the FMCA; or
 - (c) is held under a trust, a scheme, or other arrangement of a kind that is prescribed by the regulations.
- (6) In this Part, a protected deposit must be treated as being held for, or on behalf of, 1 or more persons if—
- (a) a trust, a scheme, or other arrangement of a particular kind is prescribed by the regulations for the purposes of **subsection (5)(c)**; and
 - (b) the regulations declare that a deposit held under a trust, scheme, or arrangement of that kind must be treated as being held for, or on behalf of, those persons.

Example

A managed investment scheme that is managed by a bank (**bank A**) is a multi-rate PIE (as defined in section YA 1 of the Income Tax Act 2007). The scheme only invests in protected deposits issued by bank A. An investor who holds interests in the scheme may use their investment in a similar way to a normal term deposit or call deposit.

If the regulations prescribe schemes of that kind for the purposes of **subsection (5)(c)**, the regulations may also declare that the protected deposits are to be treated as being held for, or on behalf of, the investors who hold interests in the scheme.

186 Meaning of protected deposit and related terms

- (1) In this Act, **protected deposit**—
- (a) means a debt security issued by a licensed deposit taker (**B**) if—
 - (i) payments of the principal and interest are in New Zealand currency only; and

- (ii) the terms of the debt security are governed by New Zealand law; and
 - (iii) the requirements prescribed by the regulations (if any) are satisfied; but
- (b) does not include any of the following:
 - (i) a security commonly referred to in the financial markets as a debenture, a bond, a note, commercial paper, or a convertible note (unless the security is prescribed by the regulations as being of a kind to which this subparagraph does not apply); or
 - (ii) a redeemable share (other than a redeemable share issued by a credit union, a friendly society, a co-operative company, or a building society); or
 - (iii) a debt security that is declared by the regulations not to be a protected deposit.
- (2) The amount of the protected deposit at a particular time is—
 - (a) the principal to be repaid under the debt security; and
 - (b) accrued interest for the debt security at that time, whether or not it has been credited (*see* **section 210**).
- (3) This section applies regardless of whether the protected deposit is subject to a security interest (within the meaning of section 17 of the Personal Property Securities Act 1999).

187 Meaning of specified event

In this Part, a **specified event** occurs in relation to a licensed deposit taker (**B**) if—

- (a) B is put into liquidation under New Zealand law—
 - (i) on the application of the Bank; or
 - (ii) on the application of another person where that application is made with the prior consent of the Bank; or
- (b) the Bank issues a notice in relation to B under **section 188**.

188 When Bank may issue specified event notice

- (1) The Bank may issue a notice for the purposes of **section 187(b)** in relation to a licensed deposit taker (**B**) if—
 - (a) B has entered resolution; and
 - (b) the Bank is satisfied that—
 - (i) B's financial or other difficulties are likely to cause serious and prolonged disruption to the ability of eligible investors to deal with their protected deposits in accordance with their applicable terms and conditions; and

- (ii) issuing the notice is the most appropriate means to deal with that disruption; and
- (c) issuing the notice is not likely to have a materially adverse effect on the resolution actions that the Bank will take, or is likely to take, in connection with B.
- (2) In **subsection (1)(c)**, **resolution action** means any action taken by the Bank to further the purposes set out in **section 245** in connection with B being in resolution, whether the Bank performs or exercises its functions, powers, or duties under this Act or any other legislation.
- (3) The Bank must publish the notice in the *Gazette*.
- (4) The notice must specify a quantification time that the Bank thinks fit.
- (5) However, the quantification time must be no earlier than the time at which the notice is published in the *Gazette*.

189 Bank's function under this Part

The Bank's function under this Part is to manage and administer the scheme, including—

- (a) to decide whether a notice should be issued under **section 188**; and
- (b) to determine entitlements to compensation under this Part; and
- (c) to provide that compensation under this Part as soon as practicable after a specified event; and
- (d) to exercise rights of subrogation under **subpart 4**; and
- (e) to pay money out of the fund under **subpart 5** for the purposes of supporting a resolution measure undertaken in relation to a licensed deposit taker; and
- (f) to collect the levies and interest payable under **subpart 6**; and
- (g) to administer, operate, and invest the fund; and
- (h) to monitor risks in connection with the scheme; and
- (i) to provide, or facilitate the provision of, information to the public in connection with the scheme; and
- (j) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under this Part.

Subpart 2—Depositor Compensation Fund

190 Depositor Compensation Fund established

This section establishes the Depositor Compensation Fund (the **fund**).

191 What fund consists of

- (1) The fund consists of—

- (a) all levies and interest collected under **subpart 6**;
 - (b) fund investments;
 - (c) money accruing from the investment of the fund;
 - (d) money accruing from the exercise of the rights of subrogation under **subpart 4**;
 - (e) money provided under **subpart 8**;
 - (f) any other money that may be lawfully payable into the fund.
- (2) All money owing in respect of the fund is recoverable in any court of competent jurisdiction as a debt due to the Bank or to a subsidiary of the Bank that the Bank has nominated for the purpose.

192 Payments out of fund

Money may be paid out of the fund—

- (a) to pay for the Bank performing or exercising its functions, powers, or duties under this Part, including—
 - (i) paying compensation under **subpart 3**; and
 - (ii) paying the Bank’s expenditure incurred in connection with providing, or facilitating the provision of, information to the public in connection with the scheme; and
 - (iii) paying all expenditure incurred by the Bank in connection with the Bank performing or exercising its functions, powers, or duties under this Part; and
- (b) to support a resolution measure undertaken in relation to a licensed deposit taker under **subpart 5**; and
- (c) to pay the taxation liabilities arising in respect of the fund; and
- (d) to repay any money borrowed by the Bank under **subpart 8** (deficiency in fund), and to pay any interest or fees, charges, or costs in connection with borrowing the money.

193 Bank may apportion expenditure

- (1) This section applies if the Bank reasonably considers that expenditure is related to both—
- (a) the Bank performing or exercising its functions, powers, or duties under this Part; and
 - (b) the Bank performing or exercising any other functions, powers, or duties.
- (2) The Bank may apportion the expenditure in the manner that the Bank thinks fit so as to determine the part of the expenditure that is to be met out of the fund under **section 192(a)**.

- (3) The part of the expenditure determined in relation to the fund must be treated as expenditure under **section 192(a)**.

194 Investments

- (1) The Bank may invest all or any money received by it in respect of the fund that is not immediately required for expenditure.
- (2) The Bank must comply with the requirements for the investment of the fund that are contained in the statement of funding approach.
- (3) This section does not limit **subpart 5**.
- (4) Section 113 of the Reserve Bank of New Zealand Act 2021 does not apply to an investment made under this section.

Subpart 3—Entitlement to compensation

Entitlement rules

195 General entitlement rule

- (1) A person (**A**) is entitled, in respect of 1 or more protected deposits placed with a licensed deposit taker (**B**), to compensation from the fund if—
 - (a) a specified event has occurred in relation to B; and
 - (b) A is an eligible investor; and
 - (c) the deposits are placed with B at the quantification time; and
 - (d) 1 or more of the following applies in respect of each of the deposits:
 - (i) A holds the deposit in A's own right;
 - (ii) A holds the deposit in A's own right jointly with 1 or more other persons;
 - (iii) the deposit is held for, or on behalf of, A (and no other person) in a bare trust or under a relevant arrangement;
 - (iv) the deposit is held for, or on behalf of, A and 1 or more other persons in 1 or more bare trusts or under 1 or more relevant arrangements.
- (2) The compensation to which A is entitled is the amount that is calculated by the Bank under this Part and in the manner prescribed by the regulations.
- (3) *See* **section 202**, which provides that references in this section to a person holding a deposit in their own right may be treated as including a trustee or trustees holding a deposit on trust.
- (4) This section and **sections 196 to 203** are subject to the regulations referred to in **sections 205 and 206**.

196 Calculation of entitlement

- (1) The compensation that an eligible investor referred to in **section 195 (A)** is entitled to under this Part is the lower of the following:
- (a) the total amount of the following as at the quantification time:
 - (i) the protected deposits falling within **section 195(1)(d)(i) and (iii)**; and
 - (ii) A's share of the protected deposits falling within **section 195(1)(d)(ii) and (iv)** (*see sections 197 to 199* for rules about how to determine A's share):
 - (b) \$100,000 or a temporary high balance limit (if any).

Example

Bank B goes into liquidation.

A holds a deposit of \$60,000 with B.

A and A's spouse jointly hold 2 other deposits with B worth \$40,000 and \$50,000. A's share of those deposits under **section 197** is \$45,000 (an equal share of \$90,000).

The total amount under **subsection (1)(a)** is \$105,000 (\$60,000 plus \$45,000).

This exceeds the \$100,000 coverage limit. Therefore, A is only entitled to compensation of \$100,000 on B's liquidation.

- (2) A limit in **subsection (1)(b)** applies regardless of the number or amount of deposits.
- (3) In this section, **temporary high balance limit** means a limit that—
- (a) is prescribed by, or determined in accordance with, the regulations; and
 - (b) applies to A in accordance with the regulations.

197 Protected deposit held by or on behalf of 2 or more persons jointly

- (1) This section applies if a protected deposit is held—
- (a) by 2 or more persons in their own right jointly; or
 - (b) for, or on behalf of, 2 or more persons jointly in 1 or more bare trusts or under 1 or more relevant arrangements.
- (2) For the purposes of this Part,—
- (a) each of the persons must be treated as having—
 - (i) an equal share in the protected deposit (unless **subparagraph (ii)** applies); or
 - (ii) the share in the protected deposit that is specified in records that are maintained by the licensed deposit taker, or provided by the holder of the protected deposit, in the manner prescribed by the regulations; and

- (b) a person's share in the protected deposit must be taken into account in calculating their entitlement (if any) to compensation under **section 196** (except to the extent that the regulations provide otherwise).
- (3) **Subsection (2)** applies whether or not each person is an eligible investor (but a person who is not an eligible investor is not eligible to compensation in respect of their share).
- (4) This section does not affect the rights of those persons as between themselves.

198 Protected deposit held by or on behalf of 2 or more persons other than jointly

- (1) This section—
 - (a) applies if a protected deposit is held—
 - (i) by 2 or more persons in their own right; or
 - (ii) for, or on behalf of, 2 or more persons in 1 or more bare trusts or under 1 or more relevant arrangements; but
 - (b) does not apply if **section 197** applies.

Example

A protected deposit is held in a law firm's trust account for, or on behalf of, 200 clients.

The deposit is not held on behalf of those clients jointly. Accordingly, **section 197** does not apply.

- (2) For the purposes of this Part,—
 - (a) each of the persons must be treated as having—
 - (i) the share in the protected deposit that is specified in records that are maintained by the relevant person in the manner prescribed by the regulations; or
 - (ii) if such records are not maintained, the share in the protected deposit that is notified by the relevant person in the manner prescribed by the regulations; and
 - (b) a person's share in the protected deposit must be taken into account in calculating their entitlement (if any) to compensation under **section 196** (except to the extent that the regulations provide otherwise).
- (3) **Subsection (2)** applies whether or not each person is an eligible investor (but a person who is not an eligible investor is not eligible to compensation in respect of their share).
- (4) This section does not affect the rights of those persons as between themselves.
- (5) In this section, **relevant person** means, in the case of a deposit held—
 - (a) by 2 or more persons in their own right, those persons acting together:
 - (b) in 1 or more bare trusts, the trustee or trustees:

- (c) under 1 or more relevant arrangements, a person of the kind that is prescribed in the regulations.

199 District Court may make order about shares

- (1) This section applies if—
 - (a) **section 198** applies; and
 - (b) a person referred to in **section 198(1)(a)** applies for an order under this section; and
 - (c) the Bank has not yet paid any compensation under this subpart in respect of the protected deposit.
- (2) Despite **section 198(1)(a)**, the District Court may, if it thinks it is just and equitable to do so, make an order that, for the purposes of this Part, a protected deposit must be treated as being held by, for, or on behalf of—
 - (a) a particular person; or
 - (b) 1 or more persons in the shares that the court thinks fit.
- (3) A person's protected deposit, or share in a protected deposit, as specified in an order must be taken into account in calculating their entitlement (if any) to compensation under **section 196** (except to the extent that the regulations provide otherwise).

200 Partnerships

- (1) For the purpose of entitlement to compensation from the fund, a partnership under the Partnership Law Act 2019 must be treated as being a person that is distinct from its partners.
- (2) Accordingly, if a protected deposit is held by, for, or on behalf of 2 or more partners for a partnership, the partners must not be treated as being 2 or more persons under **section 197**.

201 Bare trustees and providers of relevant arrangement not entitled to compensation

- (1) If a bare trustee holds a protected deposit—
 - (a) under a bare trust, the beneficiary or beneficiaries (but not the bare trustee) may be entitled to compensation under **sections 195 and 196** in respect of the deposit:
 - (b) under different bare trusts, the beneficiary or beneficiaries of each of those trusts (but not the bare trustee) may be entitled, in respect of the portion of the deposit held under the trust, to compensation under **sections 195 and 196** in respect of the deposit.
- (2) If a person (A) holds a protected deposit under a relevant arrangement for, or on behalf of, 1 or more other persons, the other person (but not A) may be

entitled to compensation under **sections 195 and 196** in respect of the deposit.

- (3) In this section, **beneficiary** means a person for which, or on whose behalf, the protected deposit is held.

202 Entitlement rule for deposits held on trust

- (1) This section applies if—
- (a) 1 or more protected deposits are held—
 - (i) by 1 or more trustees under one trust; or
 - (ii) for, or on behalf, of 1 or more trustees under one trust; and
 - (b) the trust is not any of the following:
 - (i) a bare trust;
 - (ii) a trust under a relevant arrangement;
 - (iii) a trust of a kind that is prescribed by the regulations.
- (2) For the purpose of entitlement to compensation from the fund,—
- (a) the following must be treated as being the person (**A**) that holds the deposit (or for which, or on whose behalf, the deposit is held):
 - (i) if the trust has only 1 trustee, the trustee acting in their capacity as trustee;
 - (ii) if the trust has more than 1 trustee, the trustees acting jointly in their capacity as trustees; and
 - (b) references to a person holding a deposit in their own right must be treated as including the trustee or trustees holding a deposit on trust.
- (3) Compensation that is paid under this Part in respect of the protected deposits held under the trust must be treated as being trust property.

Example

Bank B goes into liquidation.

The Smith Family Trust has 3 trustees: X, Y, and Z. The trust has 3 deposits with B: \$60,000, \$30,000, and \$20,000 (\$110,000 in total).

X, Y, and Z acting jointly in their capacity as trustees are treated under this Act as a person (**A**) that holds the deposits.

The total amount of the deposits is \$110,000.

This exceeds the \$100,000 coverage limit under **section 196**. Therefore, the trustees (on behalf of the trust) are only entitled to compensation of \$100,000 on B's liquidation.

The compensation is trust property.

The entitlement of the Smith Family Trust is separate from any entitlement that X, Y, or Z may have in their personal capacity (or in a capacity as a trustee for some other trust).

203 Protected deposit held under different trusts

- (1) If a protected deposit is held under different trusts, each portion of the deposit held under each of those trusts as at the quantification time must be treated as being a separate protected deposit for the purposes of calculating the entitlement to compensation in respect of each trust.

Example

A deposit of \$150,000 is held for 2 trusts: the Smith Family Trust and the Jones Family Trust. Of this amount, \$90,000 is identified as being property of the Smith Family Trust while \$60,000 is identified as being property of the Jones Family Trust. These amounts must be treated as separate deposits for the purposes of calculating entitlements to compensation for the respective trusts.

- (2) This section does not apply to a trust referred to in **section 202(1)(b)**.

204 Trustee that is ineligible in own personal capacity does not prevent compensation being payable in relation to trust

- (1) A trustee or trustees acting in their capacity as trustees must be treated as being a person distinct from the trustee or trustees in their own personal capacity.
- (2) Accordingly, the fact that 1 or more trustees may not be eligible investors in their own personal capacity does not prevent the trustee or trustees acting in their capacity as trustees from being an eligible investor.

Example

A trustee corporation (**A**) is large under **section 185(2)**. A is therefore not an eligible investor and is not entitled to compensation in respect of protected deposits held in its own right.

However, A holds various other deposits on trust as a trustee. A may be an eligible investor in its capacity as a trustee (and, accordingly, compensation may be payable in respect of the deposits held on trust).

*Entitlements subject to regulations***205 Regulations may provide for calculation of amount of person's protected deposits or share of protected deposits**

- (1) For the purposes of this subpart, the regulations may provide for the calculation of the amount of a person's protected deposits or share of protected deposits, including by taking into account any benefit to which the person is entitled or that the person might (directly or indirectly) receive in connection with a protected deposit that is held in any 1 or more of the following ways:
- (a) by a trustee or trustees on trust:
 - (b) by a partnership or any other unincorporated body:
 - (c) by 2 or more persons jointly:

- (d) by a person under a relevant arrangement (for example, under a custodial service referred to in section 431W of the Financial Markets Conduct Act 2013).
- (2) Those regulations may authorise or require the Bank to treat any protected deposit held by—
- (a) a person as being held (in whole or in part) by—
- (i) that person and 1 or more other persons jointly in the shares determined under the regulations; or
- (ii) another person; or
- (iii) 2 or more other persons jointly in the shares determined under the regulations:
- (b) 2 or more persons jointly as being held (in whole or in part) by—
- (i) 1 of those persons; or
- (ii) 1 or more of those persons in the shares determined under the regulations; or
- (iii) 1 or more of those persons and 1 or more other persons in the shares determined by the regulations; or
- (iv) 1 or more other persons in the shares determined under the regulations.
- (3) **Subsection (2)** does not limit **subsection (1)**.

206 Regulations may impose conditions

- (1) For the purposes of this subpart, the regulations may provide that a person's entitlement to compensation is subject to the conditions (if any) that are prescribed by the regulations.
- (2) The Bank may, if it thinks fit, refuse to pay compensation under this Part if 1 or more of those conditions are not complied with.

Example

As a condition of entitlement, the regulations require the trustees of a trust to provide information about the beneficiaries of the trust.

If the information is not provided, the Bank may refuse to pay compensation in connection with the protected deposits held by the trust.

207 Bank not required to pay compensation if cannot act with reasonable certainty

The Bank is not required to pay compensation under this Part in relation to a protected deposit if it is not reasonably practicable for the Bank to do any 1 or more of the following with reasonable certainty:

- (a) make any calculation under this Part:

- (b) determine who the eligible investor or investors are in respect of the deposit (and what their respective shares are);
- (c) determine how to pay the compensation to, or on account of, the eligible investor.

Other matters relating to calculation of entitlement

208 Liabilities owed to licensed deposit taker must be disregarded

For the purposes of calculating the amount of compensation that an eligible investor is entitled to under this Part, the liabilities (if any) that are owing from the eligible investor to the licensed deposit taker must be disregarded.

209 Bank may rely on licensed deposit taker's records and information from eligible investors and other persons

The Bank, when calculating and paying compensation under this Part, may rely on any of the following:

- (a) records or other information given by, or on behalf of, the licensed deposit taker (for example, information given under standards referred to in **section 81**);
- (b) information given by, or on behalf of, an eligible investor (for example, information provided under a condition imposed under **section 206**);
- (c) any other information given under this subpart (for example, information given by a relevant person under **section 198**).

210 Bank may determine interest accrued

The Bank may determine the amount of interest accrued on a protected deposit by making an estimate that is reasonable in the circumstances if the Bank considers that—

- (a) there is uncertainty as to the entire amount of interest that has accrued; or
- (b) the time required to ascertain the entire amount of interest that has accrued would be so long as to unduly delay the payment of compensation under this Part; or
- (c) the costs and expenses that would be incurred in the calculation made to ascertain the entire amount of interest that has accrued would, having regard to the likely difference between the ascertained amount and the estimated amount of the interest, outweigh the benefits of making the calculation.

*Payment of entitlements***211 How Bank must pay entitlements**

- (1) The Bank must, after calculating the entitlement of an eligible investor to compensation under this Part, pay the compensation to, or on account of, the eligible investor—
 - (a) in the manner prescribed by the regulations; and
 - (b) otherwise in the manner that the Bank thinks fit.
- (2) This section is subject to **section 207**.

212 Bank may establish account on behalf of eligible investor

- (1) The Bank may establish, on behalf of an eligible investor, an account with a licensed deposit taker (other than a deposit taker in resolution) for the purposes of wholly or partly meeting the investor's entitlement to compensation.
- (2) This section applies—
 - (a) whether or not the eligible investor consents to the Bank acting under **subsection (1)**; and
 - (b) despite anything to the contrary in any legislation.

213 Restrictions on entitlement to compensation under scheme

- (1) This section applies if the Bank has paid to, or on account of, an eligible investor (A) the full amount of compensation payable in respect of A's protected deposits in accordance with this Act.
- (2) No other person is entitled to compensation under this Part in respect of those same protected deposits.

214 Recovery of compensation paid in excess or in error under scheme

- (1) This section applies if—
 - (a) any compensation paid to, or on account of, an eligible investor out of the fund is in excess of what ought to have been paid under this Act; or
 - (b) any compensation is paid in error to any person.
- (2) The Bank may recover the amount paid in error or excess from the person who received the compensation.
- (3) The person must repay the money in the manner that is specified by the Bank.
- (4) An amount paid in error or excess to any person is money owing in respect of the fund (*see* **section 191(2)**).
- (5) On recovering an amount paid in error or excess under this section, the Bank must pay the amount into the fund.
- (6) After the amount is paid into the fund, the Bank may pay the amount out of the fund (in whole or in part) to meet any obligation payable by the Bank in con-

nection with the Bank performing or exercising functions, powers, or duties under this Part.

Subpart 4—Bank or subsidiary assumes eligible investor’s rights

215 Bank’s right of subrogation

- (1) If the Bank pays compensation under this Part to, or on account of, an eligible investor (**A**) in respect of a protected deposit issued by a licensed deposit taker (**B**), the Bank (or a subsidiary) is subrogated, to the extent of the payment, to all the rights and remedies that, but for the subrogation, A would have had in relation to the protected deposit.
- (2) This section applies—
 - (a) whether the compensation is equivalent to the full amount owing under a protected deposit or only part of that amount; and
 - (b) to give the Bank (or a subsidiary) the same rights and remedies that A would have had in relation to B, any third party, and any security for an amount owing under a protected deposit; and
 - (c) to give the Bank (or a subsidiary) the same priority that A would have had in the event of B’s insolvency.
- (3) In this subpart, **subsidiary** means a subsidiary of the Bank that the Bank has nominated for the purpose of this section.

216 Bank may apportion compensation to determine respective rights and remedies

- (1) This section applies if—
 - (a) the Bank pays compensation to, or on account of, an eligible investor (**A**) in respect of 2 or more protected deposits issued by a licensed deposit taker (**B**); and
 - (b) the amount that is paid is less than the total amount referred to in **section 196(1)(a)**.
- (2) The Bank may apportion the compensation to 1 or more of the protected deposits in the manner that the Bank thinks fit.
- (3) The Bank’s power includes the power to apportion the compensation between principal and interest.
- (4) The Bank’s apportionment is binding on A, B, the Bank, and any third parties for the purposes of determining rights, obligations, and remedies in respect of the protected deposits.

Example

A holds a deposit of \$60,000 with bank B when a specified event notice under **section 188** is issued in relation to B.

A and another person (C) jointly hold a deposit with B worth \$90,000. A's share of this deposit is \$45,000.

The total amount for A under **section 196(1)(a)** is \$105,000 (\$60,000 plus \$45,000).

However, A is only entitled to compensation of \$100,000 (see **section 196(1)(b)**).

The Bank apportions the compensation as follows:

- the \$60,000 deposit is entirely compensated. The Bank is, therefore, entirely subrogated to all of A's rights and remedies in this deposit:
- the \$45,000 deposit is compensated to the extent of \$40,000. The Bank is, therefore, subrogated to A's rights and remedies in this deposit to the extent of this payment. A retains rights and remedies in relation to the remaining \$5,000.

217 Subpart does not limit or affect other rights or remedies

This subpart does not limit or affect any other rights or remedies that the Bank may have.

Subpart 5—Use of fund to support resolution

218 Bank may use fund to support resolution

- (1) For the purposes of supporting a resolution measure undertaken for a licensed deposit taker (A) and other matters in connection with the measure, the Bank may authorise an amount to be paid out of the fund if—
 - (a) the Bank is satisfied that the resolution measure is likely to ensure that the obligations owed to eligible investors under protected deposits will be owed by a licensed deposit taker that is solvent; and
 - (b) the total amount paid out of the fund under this subpart in connection with the resolution of the licensed deposit taker does not exceed the maximum amount calculated under **section 219**.
- (2) **Subsection (1)(a)** does not apply to paying compensation under **subpart 9 of Part 7** (no creditor or shareholder worse off).
- (3) In this Part, **resolution measure** means either of the following:
 - (a) any action taken by the Bank to further the purposes set out in **section 245** in connection with a licensed deposit taker in resolution, whether the Bank performs or exercises its functions, powers, or duties under this Act or any other legislation:
 - (b) paying compensation under **subpart 9 of Part 7** (no creditor or shareholder worse off).

219 Bank must calculate maximum amount

- (1) The Bank must calculate the maximum amount in the manner—
 - (a) prescribed by the regulations (if any); or

- (b) that the Bank thinks fit (if no regulations apply for the purpose).
- (2) The regulations may, in particular, require the Bank to do 1 or more of the following:
 - (a) to apply, or not to apply, specified methods of calculation:
 - (b) to apply specified principles:
 - (c) to assess values or average values at specified dates or over specified periods:
 - (d) to take specified matters into account in a specified manner:
 - (e) not to take specified matters into account.
- (3) The regulations may also require or permit the Bank to make assumptions.
- (4) **Subsections (2) and (3)** do not limit **subsection (1)**.

220 Maximum amount based on net amount of compensation payable in hypothetical liquidation

- (1) The Minister must, before making a recommendation for regulations for the purposes of **section 219**, be satisfied of the matter specified in **subsection (3)**.
- (2) The Bank must also be satisfied of the matter specified in **subsection (3)** if the Bank is acting under **section 219(1)(b)**.
- (3) The matter to be satisfied of is that the calculation of the maximum amount will be based on—
 - (a) the Bank's estimate of the amount of compensation (if any) that would be paid to eligible investors under **subpart 3** in the event that a liquidation of the licensed deposit taker under New Zealand law had commenced immediately before it entered into resolution; less
 - (b) the Bank's estimate of the amount that would be recovered under **subpart 4** in that event.

221 Use of fund to support resolution does not affect eligible investor's entitlement to compensation

The fact that an amount is paid out of the fund under this subpart does not affect any person's entitlement to compensation under **subpart 3**.

222 Bank may apply fund money in manner it thinks fit

- (1) If an amount is paid out of the fund under this subpart, the Bank may apply that amount on the terms and conditions, and otherwise in the manner, that the Bank thinks fit.
- (2) The power in this section includes (without limitation) the power to do either or both of the following:

- (a) to pay compensation to persons under **subpart 9 of Part 7**, whether or not those persons are eligible investors;
- (b) to advance the money to a licensed deposit taker in resolution (or to any other person) on the terms and conditions that the Bank determines (for example, terms about repayment, interest on the money that has been advanced, and the grant of a security interest over the property of the deposit taker or other person).

Independent review

223 Review of assessment

- (1) The Bank must appoint 1 or more persons as reviewer as soon as is reasonably practicable after—
 - (a) a resolution ends if the Bank has paid money out of the fund under this subpart during the course of the resolution; or
 - (b) the Bank has paid money out of the fund under this subpart to pay compensation under **subpart 9 of Part 7**.
- (2) Before appointing a reviewer, the Bank must be satisfied that the person—
 - (a) has the appropriate knowledge, skills, and experience to act as the reviewer under this section; and
 - (b) is independent of the Bank.
- (3) The reviewer must—
 - (a) assess whether the Bank’s calculation of the maximum amount complies with **section 219**; and
 - (b) prepare a draft report on their findings; and
 - (c) consult the Bank on the draft report; and
 - (d) provide a final report to the Bank after taking into account the Bank’s comments on the draft.
- (4) The reviewer may, when acting under **subsection (3)(a)**, only take into account information known to the Bank at the time that it makes the calculation under **section 219**.
- (5) The Bank must publish the final report on its Internet site.

Subpart 6—Levies for scheme

224 Licensed deposit takers must pay levy

- (1) Every licensed deposit taker must pay to the Bank a levy prescribed by the regulations made under this subpart.
- (2) A licensed deposit taker must pay the levy by the date specified for payment, whether in an invoice or other appropriate document given to the deposit taker by the Bank.

- (3) The specified date for payment must be not less than 30 days after the date of the invoice or other appropriate document.
- (4) The amount of any unpaid levy and any interest under **section 225** are recoverable under **section 191(2)**.

225 Interest on unpaid levy

- (1) A person who owes a levy to the Bank is liable to pay to the Bank interest assessed at the rate and applied by the method (if any) prescribed by the regulations made under this subpart.
- (2) The interest is payable on—
 - (a) any unpaid levy; and
 - (b) any unpaid instalment payment in respect of any levy; and
 - (c) any unpaid interest that has been charged already.

226 Levy regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations providing for the levies.
- (2) The Minister must, before making a recommendation, have regard to the principle that it is desirable for the levies to be prescribed on the basis that the following costs should, over time, be met fully out of the fund:
 - (a) the costs of entitlements to compensation under this Part, including the cost of establishing and maintaining the fund (taking into account any money recovered under **subpart 4**); and
 - (b) the costs of the Bank in performing or exercising its functions, powers, or duties under this Part; and
 - (c) the costs of repaying any money provided to the fund under **subpart 8** and any interest or fees, charges, or costs in connection with the money provided to the fund; and
 - (d) the costs of collecting the levy money.
- (3) The regulations may—
 - (a) provide different levies for different classes of licensed deposit taker;
 - (b) specify the amount of levies, or the method of calculating or ascertaining the amount of levies for each class;
 - (c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the costs (including the costs referred to in **subsection (2)(c)**);
 - (d) provide for the payment and collection of levies (which may include providing for instalment payments);
 - (e) provide for interest under **section 225**:

- (f) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:
 - (g) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:
 - (h) provide for waivers, discounts, or refunds of the whole or any part of a levy for any case or class of cases.
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

227 Minister must have regard to levy principles

The Minister must, before making a recommendation under **section 226**, have regard to the following principles:

- (a) that the scheme should be fully funded by licensed deposit takers (including to meet any shortfalls to the fund):
- (b) that the amount of levies for each class of deposit taker to be specified under **section 226(3)(a)** should take into account—
 - (i) the likelihood of a specified event occurring in relation to a deposit taker of that class; and
 - (ii) estimates of the costs referred to in **section 226(2)**, including estimates of the costs of a specified event occurring in relation to a deposit taker of that class; and
 - (iii) the effect that the obligation to pay a levy under this subpart is likely to have on the financial stability of a deposit taker of that class; and
- (c) the desirability of predictability in levies.

228 Minister must also have regard to statement of funding approach and Bank's advice

The Minister must, before making a recommendation under **section 226**, have regard to—

- (a) the statement of funding approach; and
- (b) the advice given by the Bank under **section 229**.

229 Bank must give advice about levy regulations

The Bank must, before regulations are made under this subpart, give the Minister advice about the proposed regulations (**levy advice**).

230 Process for developing Bank's advice

- (1) The Bank must, before giving the levy advice, consult—

- (a) licensed deposit takers or the persons or organisations that the Bank considers are able to represent the views of licensed deposit takers; and
 - (b) any other representatives of persons that the Bank believes are significantly affected by a levy.
- (2) The consultation must include consultation relating to the amount of levies or method of calculating or ascertaining the amount of levies.

231 Bank must publish levy advice

The Bank must, as soon as practicable after regulations are made under this subpart, publish a copy of the levy advice on the Bank's Internet site.

232 Effect of failure to comply

A failure to comply with **section 230 or 231** does not affect the validity of any regulations made under this subpart.

Subpart 7—Statement of funding approach

233 Minister must publish statement of funding approach

- (1) The Minister of Finance must, at least every 5 years, publish a statement of the funding approach for the scheme.
- (2) *See* **section 228**, which requires the Minister to have regard to the statement before making a recommendation for levy regulations.
- (3) In this subpart, the **period** of the statement is the 5-year period after the date of the statement.

234 Minister must consult Bank and seek views of public

The Minister must, before publishing a statement,—

- (a) consult the Bank; and
- (b) seek the views of members of the public on the matters that the Minister considers would assist the Minister to prepare the statement; and
- (c) have regard to the comments that are provided by those members of the public within the time and in the manner specified by the Minister.

235 Contents of statement

The statement must—

- (a) contain information about the estimated costs of the scheme under this Part, including—
 - (i) information on the likelihood of 1 or more specified events occurring over the period of the statement; and
 - (ii) estimates of the costs referred to in **section 226(2)** over the period of the statement, including estimates of the cost of entitle-

- ments of 1 or more specified events occurring over the period of the statement; and
- (b) contain information about the assumptions and evidence used to prepare the estimates and other information under **paragraph (a)**; and
 - (c) set out requirements for the investment of the fund (for example, requirements relating to liquidity); and
 - (d) set out the Minister's proposed approach to managing the financial position of the Crown in connection with the scheme, including how the Minister's duty under **subpart 8** would likely be complied with if that subpart applies; and
 - (e) state whether the levies will be set with a view to the fund balance reaching, and being maintained at, a target level or within a target band and, if so,—
 - (i) that level or band; and
 - (ii) the estimated time frame for the fund balance reaching that level or band; and
 - (f) state the reasons for the level or band, and time frame, under **paragraph (e)**.

Subpart 8—Deficiency in fund

236 Deficiency in fund

- (1) This section applies if a specified event has occurred but the property of the fund is not sufficient to do 1 or both of the following in connection with the specified event:
 - (a) pay entitlements to compensation under this Part;
 - (b) meet all other costs of the Bank in performing or exercising its functions, powers, or duties under this Part.
- (2) The Minister must provide to the fund out of public money, without further appropriation than this section, money by way of grant or advance as may be necessary to meet the deficiency.
- (3) The money is provided under this section on the terms and conditions that the Minister determines (for example, terms about repayment by the Bank of money lent to the fund and interest on that money).
- (4) *See* **subpart 6**, which provides for levies to recover any money provided to the fund under this section and any interest or fees, charges, or costs in connection with the money provided to the fund.

Subpart 9—Accountability

237 Financial statements of fund

- (1) As soon as practicable after the end of each financial year, the Bank must prepare financial statements in relation to the fund for that financial year.
- (2) The financial statements must—
 - (a) comply with generally accepted accounting practice (as defined in section 8 of the Financial Reporting Act 2013); and
 - (b) include any other information or explanations needed to fairly reflect the financial operations and financial position of the fund; and
 - (c) include a forecast statement of comprehensive revenue and expense for the fund prepared at the start of the financial year, for comparison with the actual financial statements.

238 Statement of responsibility

- (1) The financial statements in relation to the fund must contain, or be accompanied by, a statement of responsibility.
- (2) The statement must—
 - (a) contain a statement of the signatories' responsibility for the preparation of the financial statements and for the judgments in them; and
 - (b) contain a statement of the signatories' responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting in relation to the fund; and
 - (c) contain a statement that, in the opinion of the signatories, the financial statements for the financial year fairly reflect the financial position and operations of the fund; and
 - (d) be dated and signed on behalf of the board of the Bank by 2 members.

239 Auditor-General is auditor of fund

The fund is to be treated as if it were a public entity as defined in section 4 of the Public Audit Act 2001 and, in accordance with that Act, the Auditor-General is its auditor.

240 Audit of financial statements

- (1) The Bank must forward to the Auditor-General the financial statements of the fund before the end of the second month following the end of the financial year to which the statements relate.
- (2) The Auditor-General must—
 - (a) audit the statements; and

- (b) provide an audit report on those statements to the Bank within 30 days after receiving them.

241 Board must ensure that proper accounting records are kept

- (1) The board of the Bank must cause accounting records to be kept that—
 - (a) correctly record and explain the transactions of the fund; and
 - (b) will at any time enable the financial position of the fund to be determined with reasonable accuracy; and
 - (c) will enable the members of the board of the Bank to ensure that the financial statements of the fund comply with this subpart; and
 - (d) will enable the financial statements of the fund to be readily and properly audited.
- (2) The accounting records must be in written form or in a manner in which they are easily accessible and convertible into written form.

Subpart 10—Miscellaneous provisions

Additional liquidation duties and powers

242 Additional duties of liquidator of licensed deposit taker

[To come]

243 Additional powers of liquidator of licensed deposit taker

[To come]

No holding out that product is protected deposit

244 No holding out that product is protected deposit

- (1) An issuer of a financial product or an associated person of the issuer must not, directly or indirectly, hold out that—
 - (a) the financial product is a protected deposit if that is not the case; or
 - (b) a holder of the financial product is entitled to compensation under this Part if that is not the case.
- (2) An issuer that contravenes **subsection (1)** commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Part 7

Crisis management and resolution

Subpart 1—Preliminary provisions

245 Additional purposes of Part

- (1) The purposes of this Part are—
 - (a) to enable a licensed deposit taker that is in resolution to be dealt with in an orderly manner; and
 - (b) to avoid significant damage to the financial system that could result from a licensed deposit taker being in financial distress or other difficulties, including—
 - (i) by maintaining the continuity of systemically important activities undertaken by licensed deposit takers in New Zealand; and
 - (ii) by mitigating, or otherwise managing, any loss of confidence in the financial system resulting from a licensed deposit taker being in financial distress or other difficulties; and
 - (c) to support the purpose of **Part 6**; and
 - (d) to the extent not inconsistent with any of **paragraphs (a), (b), and (c)**, to minimise the costs of dealing with, or costs or losses otherwise incurred in connection with, a licensed deposit taker that is in financial distress or other difficulties by—
 - (i) preserving the interests of creditors and maintaining the ranking of claims of creditors; and
 - (ii) dealing with the financial distress or other difficulties as quickly as is reasonably practicable; and
 - (e) to the extent not inconsistent with any of **paragraphs (a), (b), and (c)**, to support the effective and efficient management of public financial resources by avoiding or minimising, and otherwise managing, the need to rely on public money to deal with a licensed deposit taker that is in financial distress or other difficulties.
- (2) In this section, **public money** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- (3) This section does not limit **section 3**.

Subpart 2—Planning and statement of approach

246 Bank must prepare and maintain orderly resolution plan for each licensed deposit taker

The Bank must prepare and maintain a plan, in relation to each licensed deposit taker, that is designed to facilitate dealing with the deposit taker in an orderly manner if it were to enter into resolution.

247 Bank must publish statement of approach to resolution

The Bank must, after consulting the Minister, publish a statement of approach to resolution on the Bank's Internet site.

248 Content of statement of approach

The statement of approach must state—

- (a) the Bank's expected resolution strategy or strategies for dealing with licensed deposit takers under this Part; and
- (b) the Bank's intended approach to the following in connection with dealing with licensed deposit takers under this Part:
 - (i) co-operating with relevant law enforcement or regulatory agencies, Australian financial authorities, and overseas supervisors; and
 - (ii) engaging with the Minister and relevant law enforcement or regulatory agencies on the use of powers under this Part; and
 - (iii) otherwise performing or exercising functions, powers, or duties under **subparts 3 to 7**.

249 Review of statement of approach

- (1) The Bank—
 - (a) must review the statement of approach within 5 years after the first statement is published and then at subsequent intervals of not more than 5 years; and
 - (b) may review the statement of approach at any other time.
- (2) In carrying out the review, the Bank must—
 - (a) consider whether any amendments to the statement of approach are necessary or desirable; and
 - (b) report on the findings to the Minister.
- (3) The Bank must publish the report on the Bank's Internet site as soon as practicable after giving it to the Minister.

250 Failure to comply with subpart does not effect validity of Bank's actions

The performance or exercise of a function, power, or duty is not invalid by reason only of a failure to comply with this subpart.

Subpart 3—Bank may give directions, approve sales, and replace directors*Bank may give directions***251 Bank may give directions to licensed deposit taker**

- (1) The Bank may give a licensed deposit taker (A) a direction if the Bank—
 - (a) has reasonable grounds to believe that 1 or more of the circumstances set out in **subsection (2)** apply; and
 - (b) considers that directing A is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in **subsection (2)**;
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in **subsection (2)**;
 - (iii) to avoid any further contravention of a prudential obligation in connection with the matter set out in **subsection (2)**.
- (2) The circumstances are as follows:
 - (a) A is insolvent or is likely to become insolvent;
 - (b) the circumstances of A are such as to be prejudicial to the soundness of the financial system;
 - (c) A's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) the soundness of the financial system;
 - (d) A has contravened, may have contravened, or is likely to contravene a requirement under an applicable standard or a condition of its licence to maintain a minimum amount (or ratio) of capital;
 - (e) A has contravened, may have contravened, or is likely to contravene any other prudential obligation in a material respect;
 - (f) A has been or is operating fraudulently or recklessly;
 - (g) an overseas supervisor has taken, or is taking, regulatory action against A or against a person that controls A (whether or not that action has been completed).
- (3) **Subsection (1)(d)** does not limit **subsection (1)(e)**.

252 Bank may give directions to associated person

- (1) The Bank may give an associated person (**B**) of a licensed deposit taker (**A**) a direction if the Bank—
 - (a) has reasonable grounds to believe that 1 or more of the circumstances set out in **subsection (2)** apply; and
 - (b) considers that directing B is necessary or desirable for 1 or more of the following purposes:
 - (i) to remedy or avoid the matter set out in **subsection (2)**;
 - (ii) to avoid or mitigate any adverse effects arising, or likely to arise, in connection with the matter set out in **subsection (2)**;
 - (iii) to avoid any further contravention of a prudential obligation in connection with the matter set out in **subsection (2)**.
- (2) The circumstances are as follows:
 - (a) A's business and affairs are so closely connected with B that the Bank would be unable to effectively exercise the powers conferred by this Part in relation to A unless a direction is issued to B;
 - (b) the circumstances of B are such as to be prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect;
 - (c) B's affairs are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect.

253 Scope of directions

- (1) A direction given under this subpart may require a licensed deposit taker or an associated person to do 1 or more of the following:
 - (a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the deposit taker or associated person and the actions or proposed actions to resolve any difficulties facing the deposit taker or associated person;
 - (b) carry on its business, or any part of its business, in accordance with the direction;
 - (c) cease to carry on its business, or any part of its business, in accordance with the direction;
 - (d) ensure that any director, or any senior manager or other employee, of the deposit taker or associated person ceases to take part in the management

or conduct of its business except with the permission of the Bank and so far as that permission extends:

- (e) remove or replace any of the directors of an associated person of the deposit taker:
 - (f) remove or replace its auditor or appoint an auditor approved by the Bank:
 - (g) take the action that is specified in the direction to address a contravention of any prudential obligation:
 - (h) take the action that is specified in the direction to address any circumstances of financial difficulties:
 - (i) implement all, or part, of the deposit taker's contingency and recovery plans in accordance with the direction (*see* **section 84**):
 - (j) issue shares in accordance with the direction:
 - (k) take the action that is specified in the direction that is necessary or desirable for any matter in **section 74(4)(a), (b), (c), or (d)** to occur under a bail-in instrument.
- (2) If the events or circumstances referred to in **section 74(2)(c)** for a bail-in instrument include a direction under this subpart, a direction given under this subpart may provide for a matter in **section 74(4)(a), (b), (c), or (d)** to occur.

254 Direction must be in writing and state grounds

A direction given under this subpart must—

- (a) be in writing; and
- (b) state the grounds on which it is given.

Bank may approve sale or disposition

255 Bank may approve sale or disposition

- (1) The Bank may approve a sale or other disposition of the whole or part of the capital or business undertaking of either or both of the following:
- (a) a licensed deposit taker if the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in **section 251(2)** exist:
 - (b) an associated person of the licensed deposit taker if the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in **section 252(2)** exist.
- (2) If the Bank grants an approval,—
- (a) it must be given by written notice to the parties; and

- (b) the provisions of any legislation requiring any consent, licence, permission, or clearance or other authority do not apply as a condition of the legality or validity of the sale or other disposition.

Compare: 1989 No 157 s 116(2), (3)

Bank may remove, replace, or appoint director

256 Power to remove, replace, or appoint director of licensed deposit taker

- (1) The Bank may remove or replace a director of a licensed deposit taker (A), or appoint a person as a director of a licensed deposit taker (A), if the Bank—
- (a) has reasonable grounds to believe that 1 or more of the following matters apply:
- (i) A is insolvent or is likely to become insolvent;
 - (ii) the circumstances of A are such as to be prejudicial to the soundness of the financial system;
 - (iii) A has contravened, may have contravened, or is likely to contravene any prudential obligation in a material respect; and
- (b) considers that exercising a power under this section is necessary or desirable.
- (2) This section does not apply to a director of an overseas person.
- (3) This section and **section 257** have effect despite any legislation, any rule of law, or the terms of the constitution of a licensed deposit taker.

257 How Bank exercises power to remove, replace, or appoint director

- (1) The Bank must—
- (a) exercise a power under **section 256** by giving written notice to—
- (i) the director concerned, or the person being appointed; and
 - (ii) in the case of the removal, replacement, or appointment of a director, the Registrar of Companies; and
- (b) give written notice of the exercise of the power to the licensed deposit taker.
- (2) A notice given under **subsection (1)(a)(ii)** is sufficient compliance with section 159 of the Companies Act 1993 as long as, in the case of an appointment, the notice is accompanied by the form of consent and certificate required under section 152 of that Act.

Disclosure of direction or notice

258 Prohibition on disclosing or publishing direction or notice

- (1) A person must not disclose or publish the fact that a direction has been given under this subpart or that a notice has been given under **section 257**.

- (2) **Subsection (1)** does not apply to the disclosure or publication of the fact that a direction or notice has been given if the disclosure or publication is made—
- (a) to any director, senior manager, or professional or financial adviser of the licensed deposit taker, or associated person of a licensed deposit taker, to which the direction or notice relates; or
 - (b) with the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the licensed deposit taker or associated person of a licensed deposit taker; or
 - (c) by, or on behalf of, the Bank or with the written consent of the Bank,—
 - (i) to the public or any class of the public; or
 - (ii) to any person who has a proper interest in knowing that the direction or notice has been given.
- (3) For the purposes of **subsection (2)(b) and (c)**,—
- (a) the Bank's consent must not be unreasonably withheld; and
 - (b) in considering whether to give its consent, the Bank must take into account the time that has elapsed since the direction or notice was given.
- (4) **Subsection (1)** does not apply to the disclosure or publication of the fact that a direction has been given under **section 253(1)(d)** if the disclosure or publication is for the purpose of giving effect to the direction.
- (5) **Subsection (1)** does not apply to the disclosure or publication of the fact that the Bank has directed a matter in **section 74(2)(a), (b), (c), or (d)** to occur (which relates to bail-in).

Compare: 2010 No 111 s 150(1)–(4)

259 Offence for contravening prohibition

A person who contravenes **section 258** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
- (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Compare: 2010 No 111 s 150(5)

Subpart 4—Resolution of licensed deposit takers and associated persons

260 Resolution of licensed deposit takers and associated persons

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,—

- (a) declare that a licensed deposit taker (**A**) is in resolution; and

- (b) declare that 1 or more associated persons of a licensed deposit taker are in resolution.

Compare: 1989 No 157 s 117(1)

261 Resolution of subsidiaries

- (1) If a licensed deposit taker (A) enters resolution, every subsidiary of A also enters resolution unless the subsidiary is declared to be a subsidiary to which the order under **section 260** does not apply.
- (2) If A acquires a subsidiary after it enters resolution, the subsidiary is also in resolution unless an Order in Council is made before the acquisition that declares that the subsidiary to be acquired is not in resolution.

Compare: 1989 No 157 s 117(2), (2A)

262 Resolution for overseas persons

If a licensed deposit taker in resolution is an overseas person, this subpart and **subparts 5 to 8** only apply to—

- (a) the property, rights, and liabilities relating to its New Zealand business; and
- (b) the management or conduct of its New Zealand business.

Compare: 1989 No 157 s 117(3)

263 Date on which, and time at which, resolution starts

- (1) An Order in Council under this subpart must specify the date on which, and the time at which, it comes into force.
- (2) The date and time must not be earlier than the date on which, and the time at which, the Order in Council is made.
- (3) A licensed deposit taker—
 - (a) **enters resolution** when the Order in Council comes into force; and
 - (b) remains **in resolution** until the end of the resolution under **section 268**.

Compare: 1989 No 157 s 117(4), (5)

264 Questions about whether transactions are before or after resolution

- (1) This section applies if a question arises as to whether, on the date on which a licensed deposit taker entered resolution, an act was done or a transaction was entered into or effected before or after the deposit taker entered resolution.
- (2) The act or transaction must, in the absence of proof to the contrary, be treated as having been done or entered into or effected after the deposit taker enters resolution.

Compare: 1989 No 157 s 117(1A)

265 Limitation on application of provisions to covered bond SPV

A covered bond SPV is not—

- (a) an associated person for the purposes of **section 260**; or
- (b) a subsidiary for the purposes of **section 261**.

Compare: 1989 No 157 s 139J(4)

266 Grounds on which licensed deposit taker may be declared to be in resolution

- (1) The Bank may make a recommendation under **section 260** in respect of a licensed deposit taker (A) only if the Bank—
 - (a) is satisfied on reasonable grounds that 1 or more of the following matters apply:
 - (i) A is insolvent or is likely to become insolvent:
 - (ii) A has contravened a requirement under an applicable standard or a condition of its licence to maintain a minimum amount (or ratio) of capital:
 - (iii) A has contravened a direction given under **subpart 3**:
 - (iv) A has persistently or seriously contravened any other prudential obligation:
 - (v) an overseas supervisor has taken, or is taking, regulatory action against A or against a person that controls A (whether or not that action has been completed); and
 - (b) is satisfied that there is no reasonable prospect of the matters that apply under **paragraph (a)** being adequately dealt with to the Bank's satisfaction in a timely and orderly way other than through resolution.
- (2) **Subsection (1)(a)(ii) and (iii)** do not limit **subsection (1)(a)(iv)**.
- (3) In this section, **regulatory action**, in relation to A or a person that controls A, means—
 - (a) action to cancel or suspend the licence, registration, or other authorisation of A or the person to act as a bank or other deposit taker (or action equivalent to cancelling or suspending such a licence, registration, or authorisation); or
 - (b) a direction to A or the person to the effect of 1 or more of the following:
 - (i) to take specified action to improve its solvency:
 - (ii) to carry on its business, or any part of its business, in accordance with the direction:
 - (iii) to cease to carry on its business, or any part of its business, in accordance with the direction.

Compare: 1989 No 157 s 118

267 Grounds on which associated person may be declared to be in resolution

- (1) The Bank may make a recommendation under **section 260** in respect of an associated person (**B**) of a licensed deposit taker (**A**) if the Bank—
 - (a) is satisfied on reasonable grounds that 1 or more of the matters set out in **subsection (2)** apply; and
 - (b) is satisfied there is no reasonable prospect of the matters that apply under **paragraph (a)** being adequately dealt with to the Bank's satisfaction in a timely and orderly way other than through resolution.
- (2) The matters are as follows:
 - (a) B has contravened, or is contravening, any direction or other requirement imposed by or under this Act or the regulations:
 - (b) A's business and affairs are so closely connected with B that the Bank will be unable to exercise effectively the powers conferred by this Part in relation to A unless B is in resolution:
 - (c) the circumstances of B are such as to be prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect:
 - (d) the affairs of B are being conducted in a manner prejudicial to—
 - (i) A's solvency; or
 - (ii) A's ability to comply with a prudential obligation in a material respect.

268 End of resolution

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that a licensed deposit taker or other person that is in resolution is no longer in resolution.
- (2) A licensed deposit taker or other person is also no longer in resolution if it is put into liquidation on the application of the Bank.
- (3) The resolution ends,—
 - (a) in the case of **subsection (1)**, at the date and time specified in the Order in Council; or
 - (b) in the case of **subsection (2)**, at the commencement of the liquidation.
- (4) If an Order in Council declares that a licensed deposit taker is no longer in resolution, every subsidiary of the deposit taker, except a subsidiary specified in the order, is also no longer in resolution (with effect at the same date and time specified under **subsection (3)(a)**).

Compare: 1989 No 157 s 144

269 Application of resolution provisions to other persons in resolution

- (1) References in **subparts 5, 6, and 8** to a licensed deposit taker must be read as including references to another person in resolution (unless the context otherwise requires).
- (2) In this section, **another person in resolution** means any of the following persons if the person is in resolution:
 - (a) a subsidiary or any other associated person of a licensed deposit taker:
 - (b) a body corporate formed and registered under **section 291 or 297**.

Compare: 1989 No 157 s 140(2)(b)

Subpart 5—Moratorium and restriction on resolution trigger**270 Moratorium**

- (1) If a licensed deposit taker (**A**) is in resolution, no person may do any of the following:
 - (a) commence or continue a proceeding, including a proceeding by way of counterclaim, against A:
 - (b) issue an execution, attach a debt, or otherwise enforce or seek to enforce a judgment or an order obtained in respect of A:
 - (c) take any steps to put A into liquidation or voluntary administration:
 - (d) enter into possession of, sell, or appoint a receiver of A's property or property in respect of which A has an equity of redemption:
 - (e) exercise or continue a power or rights under, or in accordance with, a mortgage, charge, debenture, instrument, or other security interest over A's property:
 - (f) claim or recover, under a retention of title clause, hire purchase agreement, mortgage, lease, or security interest, any property in A's possession:
 - (g) determine or forfeit a tenancy, retake or re-enter premises, or exercise or continue a power or rights under or in connection with a lease, against A:
 - (h) exercise a right of set-off against A.
- (2) Nothing in **subsection (1)** limits or prevents the Bank from performing or exercising any functions, powers, or duties under this Part.
- (3) This section is subject to **section 397(1) to (3)**.

Compare: 1989 No 157 s 122(1), (10)

271 Period of moratorium

- (1) The moratorium under **section 270(1)** ends on the earlier of the following:
 - (a) the end of the resolution:

- (b) the close of the date that is 12 months after the date on which the licensed deposit taker enters resolution.
- (2) However, the Bank may, by notice in the *Gazette*, extend the period of the moratorium under **section 270(1)** beyond the period referred to in **subsection (1)(b)** for a further period not exceeding 12 months, and may in the same manner extend that period on successive occasions.
- (3) The Bank may extend the period of the moratorium under **subsection (2)** only if it is satisfied that it is necessary or desirable to do so for either or both of the purposes in **section 245(1)(a) and (b)**.
- (4) The Bank may only issue a notice to extend the period of the moratorium before the end of the period to be extended.
- (5) An extension may relate separately to a licensed deposit taker and any 1 or more associated persons of the deposit taker.

272 Bank must publish notice on Internet site

The Bank must, as soon as practicable, publish a notice under **section 271(2)** on the Bank's Internet site.

273 Restriction on resolution trigger

- (1) This section applies if a licensed deposit taker (A) is party to an agreement, whether the proper law of the agreement is the law of New Zealand or the law of any other jurisdiction.
- (2) None of the matters referred to in **subsection (3)** allows the agreement, or a party to the agreement (other than A), to do any of the following:
 - (a) deny any liability or obligation under the agreement:
 - (b) accelerate or require the payment or performance of a liability or an obligation:
 - (c) terminate or close out any transaction relating to the agreement:
 - (d) enforce any security interest under the agreement.
- (3) The matters are as follows:
 - (a) A, or an associated person of A, entering into resolution:
 - (b) the Bank or the Minister performing or exercising 1 or more functions, powers, or duties under **subpart 4**, this subpart, or any of **subparts 6 to 8** in relation to A or an associated person of A.
- (4) This section continues to apply despite the end of the period of the moratorium under **section 271**.
- (5) This section is subject to **section 397(1) to (3)**.

274 Person may commence or continue proceeding with leave

Despite **sections 270 and 273**, a person may commence or continue a proceeding against the licensed deposit taker for the purpose of determining whether a right or liability exists if the leave of the Bank or the High Court is first obtained.

Compare: 1989 No 157 s 122(2)

275 Bank may waive application of moratorium and restriction on resolution trigger

(1) Despite **sections 270 and 273**, the Bank may waive the application in whole or in part of either or both of those sections to a creditor or class of creditors in respect of the whole or part of a claim of, or security interest held by, the creditor or class of creditors.

(2) This section does not apply to **section 270(1)(c)**.

Compare: 1989 No 157 s 122(3)

276 Moratorium and restriction on resolution trigger do not affect existence or priority of security interest

Sections 270 and 273 do not affect the existence of any security interest over the property of the licensed deposit taker or its priority over other debts.

Compare: 1989 No 157 s 122(4)

277 Moratorium does not limit or prevent obligations incurred or rights granted after deposit taker enters resolution

Section 270(1)(a), (b), and (d) to (h) does not limit or prevent a person from taking any of the actions specified in those paragraphs in relation to an obligation incurred or a right granted under a deed, an instrument, a trust, or an agreement entered into by the licensed deposit taker after the date on which, and the time at which, the deposit taker enters resolution.

Compare: 1989 No 157 s 122(5)

278 Moratorium and restriction on resolution trigger do not limit or affect certain rights under netting agreement or rights under rules of designated FMI

(1) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 apply,—

(a) **section 270(1)(h)** does not apply to a right of set-off provided for in the netting agreement; and

(b) **section 270(1)** does not limit or prevent the exercise of any of the following rights under the netting agreement:

(i) the termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event that is specified in the netting

agreement and is an event (including entering resolution) that occurs not later than when the licensed deposit taker enters resolution:

- (ii) the taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and
 - (c) **sections 270(1) and 273** do not limit or prevent the exercise of any right referred to in **section 270(1)(d) to (f)** in respect of any property of the licensed deposit taker (A) to the extent that the right is exercised to enforce, or to assist in enforcing, the due performance, by A, of obligations entered into by A under a recognised multilateral netting agreement (within the meaning of section 310A of the Companies Act 1993).
- (2) **Subsection (1)(b)** is subject to **section 279**.
- (3) If subpart 5 of Part 3 of the Financial Market Infrastructures Act 2021 applies to a transaction or an arrangement,—
- (a) **sections 270(1) and 273** do not limit or prevent the exercise of any right relating to the calculation of a netted balance under the rules of the FMI; and
 - (b) **sections 270(1) and 273** do not limit or prevent the exercise of any right referred to in **section 270(1)(d) to (f)** in respect of any property of the licensed deposit taker (A) if the right that is exercised—
 - (i) is provided under the rules of the FMI; and
 - (ii) has been granted to secure, or to assist in securing, the due performance, by A, of obligations entered into by A under those rules.
- (4) In this section,—
- (a) **designated FMI**, **netting**, and **participant** have the meanings given in section 5 of the Financial Market Infrastructures Act 2021; and
 - (b) **netted balance** means any amount calculated in accordance with the rules of a designated FMI as the net debit payable by, or on behalf of, a participant of the designated FMI to, or on behalf of, another participant of that designated FMI for all or any claims or obligations to which those rules apply; and
 - (c) **rules** is to be read in accordance with section 35 of the Financial Market Infrastructures Act 2021.

Compare: 1989 No 157 s 122(7)–(9)

279 Moratorium and restriction on resolution trigger do not limit or prevent certain things in relation to derivatives after stay

- (1) **Sections 270(1) and 273** do not limit or prevent an agreement, or a party to an agreement, from doing any of the things referred to in **subsection (2)** in relation to a derivative or a relevant security interest if the thing is done after—
- (a) the default time; or
 - (b) an earlier or a later time specified by the Bank in a notice issued under **section 280**.
- (2) The things are as follows:
- (a) deny any liability or obligation under the agreement:
 - (b) accelerate or require the payment or performance of a liability or an obligation:
 - (c) terminate or close out any transaction relating to the agreement:
 - (d) enforce any security interest under the agreement.
- (3) However, in the case of a relevant security interest, **subsection (1)** applies only if, before the agreement or party does the thing referred to in **subsection (2)**, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—
- (a) the enforcing counterparty; or
 - (b) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) In this section and **section 280**,—
- default time** means the close of the day after the date on which the licensed deposit taker enters resolution
- derivative** means a derivative within the meaning of section 8(4) of the FMCA (but disregarding any specified declaration)
- relevant security interest** means a security interest that secures payment or performance of an obligation under or in relation to a qualifying derivative
- specified declaration** means a declaration under subpart 3 of Part 9 of the FMCA other than a declaration that has been specified in the regulations as applying for the purposes of this section.
- (5) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in this section have in this section the same meanings as in **section 62A**.
- (6) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of **subsection (3)** (and those modifications include treating references to section 42(10)(b) of that Act as references to **subsection (3)** of this section).

Compare: 2021 No 13 s 125; 1989 No 157 s 122(9A), (9B)

280 Bank may reduce or extend stay

- (1) The Bank may, before the default time, issue a notice that specifies an earlier or a later time for the purposes of **section 279(1)(b)** in respect of a licensed deposit taker (**A**) that is in resolution.
- (2) The time that is specified may be—
 - (a) before the default time; or
 - (b) after the default time if the Bank is satisfied of all of the matters set out in **section 281**.
- (3) The notice may relate to all things referred to in **section 279(2)** or to a class or classes of those things.

Compare: 1989 No 157 s 122C; 2021 No 13 s 126

281 Matters Bank must be satisfied of when reducing or extending stay

The matters referred to in **section 280(2)(b)** are that—

- (a) A is able to meet all of the following liabilities as and when those liabilities become due and payable:
 - (i) A's liabilities under all netting agreements to which sections 310A to 310O of the Companies Act 1993 apply;
 - (ii) A's liabilities in respect of security interests over collateral to the extent that the security interests secure payment or performance of obligations under or in relation to derivatives;
 - (iii) A's liabilities that are subject to netting under the rules of a designated FMI; and
- (b) A is able to pay its debts as they become due in the normal course of business; and
- (c) either—
 - (i) A complies with the minimum capital requirements (if any) to which it is subject under an applicable standard; or
 - (ii) there are satisfactory arrangements in place to ensure that A meets all of its liabilities referred to in **paragraph (a)** as and when those liabilities become due and payable and those arrangements will remain in place until A complies with the requirements referred to in **subparagraph (i)** or the resolution ends, whichever occurs first.

Compare: 1989 No 157 s 122D

282 Publication of notice

- (1) The Bank must, as soon as practicable,—
 - (a) publish any notice issued under **section 280** on the Bank's Internet site; and

- (b) notify the issue of the notice in the *Gazette*.
- (2) The notice may take effect at any time after it is published under **subsection (1)(a)**.
- (3) The notice cannot be varied or revoked.
- Compare: 1989 No 157 s 122E

Subpart 6—Conduct of resolution

Management and control of deposit taker

283 Management of licensed deposit taker vests in Bank

The management of a licensed deposit taker in resolution vests in the Bank on and from the time when it enters resolution.

Compare: 1989 No 157 s 128

284 Directors, managers, and other persons may act only with Bank’s permission

- (1) If a licensed deposit taker is in resolution, it is not lawful or competent for a director, a senior manager or any other manager, or any other person to be engaged in the management or conduct of its business, or to act as an officer, agent, or employee of the deposit taker, except with the permission of the Bank and to the extent that the permission extends.
- (2) This section is subject to **section 397(1) to (3)**.

Compare: 1989 No 157 s 128

Bank’s general powers

285 Bank’s general powers

The Bank has all of the powers, rights, and authorities that are necessary or desirable to enable the Bank to further the purposes set out in **section 245** in connection with the resolution of a licensed deposit taker.

Compare: 1989 No 157 s 129(1)

286 Bank has powers of deposit taker and of its shareholders, members, and board

The Bank has—

- (a) all the powers, rights, and privileges that the licensed deposit taker in resolution has under any agreement or otherwise; and
- (b) in the case of a body corporate in resolution,—
- (i) all the powers of the shareholders or members in general meeting; and
- (ii) all the powers of the board of directors of the body corporate; and

- (c) in the case of a partnership in resolution, all the powers exercisable by a partner or partners; and
- (d) in the case of any other unincorporated body of persons in resolution, all the powers exercisable by its governing body.

Compare: 1989 No 157 s 129(2)

287 Bank may carry on business of licensed deposit taker

The Bank may carry on all or any part of the business of the licensed deposit taker in resolution and has, in relation to the deposit taker, all of the powers, rights, and authorities that are necessary or desirable to carry on that business.

Compare: 1989 No 157 s 130

288 Bank may pay creditors and compromise claims

The Bank may do 1 or more of the following:

- (a) pay, in whole or in part, any creditor or class of creditors of the deposit taker:
- (b) make a compromise or an arrangement with a creditor, or person claiming to be a creditor, of the deposit taker:
- (c) compromise all calls, debts, and claims subsisting, or supposed to subsist, between the deposit taker and any other person:
- (d) deal with all questions relating to the property of the deposit taker:
- (e) give a complete or partial discharge in relation to any calls, debts, or claims subsisting, or supposed to subsist, between the deposit taker and any other person.

Compare: 1989 No 157 s 131

289 Bank's powers under regulations

- (1) The Governor-General may, by Order in Council, make regulations conferring on the Bank ancillary or additional powers necessary or desirable for the purposes of this subpart.
- (2) Regulations made under this section—
 - (a) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) must be confirmed by an Act (*see* subpart 3 of Part 5 of the Legislation Act 2019).

Compare: 1989 No 157 s 152

Bank's investigation powers

290 Bank's investigation powers

- (1) The Bank has all the powers conferred, and all the duties imposed, on a person appointed under **subpart 5 of Part 4**.

- (2) The following provisions apply, with any necessary modifications, as if the Bank were appointed under **section 125**:
- (a) **sections 126 and 127** (which relate to powers to carry out an investigation of the affairs of a licensed deposit taker); and
 - (b) **section 128** (which sets out offences in relation to investigations).
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) This section does not limit any other power conferred on the Bank (for example, powers under **subpart 1 of Part 4**).

Compare: 1989 No 157 s 117(6)

Bank may form body corporate to acquire New Zealand business

291 Bank may form body corporate to acquire New Zealand business

- (1) If an overseas licensed deposit taker (A) is in resolution, the Bank may do 1 or more of the following:
- (a) form and register a body corporate (B) under the Companies Act 1993;
 - (b) subscribe for or acquire, as trustee for A, all or any of B's shares;
 - (c) issue all or any of B's shares as fully or partly paid on the terms and conditions that the Bank thinks fit.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare that the whole or any part of any property, rights, and liabilities of A relating to its New Zealand business will vest in B on a date specified in the order.
- (3) The property, rights, and liabilities of A vest in B on the date specified.

Compare: 1989 No 157 s 123(1), (2)

292 Vesting does not affect deposit taker's obligations or place it in breach

A vesting under **section 291**—

- (a) does not reduce, extinguish, or affect any obligation or liability of the overseas licensed deposit taker (A); and
- (b) does not constitute a breach or repudiation of any agreement entered into by A with any person.

Compare: 1989 No 157 s 123(3)

293 Body corporate is also subject to resolution

- (1) The body corporate (B) referred to in **section 291** must be treated as being in resolution.
- (2) The period of moratorium under **subpart 5** is initially the same as the period of moratorium that applies to the licensed deposit taker (A).

- (3) However, the Bank may exercise a power under **section 271(2)** in relation to B separately from A.

Compare: 1989 No 157 s 123(4)

294 Vesting of property or rights subject to security interest

- (1) An order may be made under **section 291** vesting any property and rights of an overseas licensed deposit taker (**A**) in a body corporate (**B**) despite the existence, or the terms and conditions, of any security interest over the property, or over those rights, in favour of any other person.

- (2) Any property or rights that are declared to vest under an order made under **section 291** in B and that are subject to a security interest in favour of any other person continue to be subject to the security interest.

Compare: 1989 No 157 s 124

295 Proof of vesting

- (1) A registrar is not obliged solely by reason of **section 291** to change the name of the licensed deposit taker (**A**) referred to in that section to that of the body corporate (**B**) formed and registered under that section in any register or in any document.
- (2) If B presents to a registrar or any other person an instrument that meets the requirements of **subsection (3)**, the instrument is, in the absence of evidence to the contrary, sufficient proof that the property is vested in B.
- (3) The requirements are that the instrument—
- is executed or purports to be executed by B; and
 - relates to any property held by A before the date specified in an Order in Council made under **section 291**; and
 - contains a statement that the property has become vested in B under that section.
- (4) **Subsection (2)** applies whether or not the instrument is or includes an instrument of transfer.
- (5) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 1989 No 157 s 125

Bank may dispose of business undertaking or property, rights, or liabilities

296 Bank's disposal power

- (1) The Bank may do 1 or more of the following in relation to a licensed deposit taker in resolution (**A**):
- sell, transfer, or otherwise dispose of the whole or any part of the business undertaking of A;
 - sell, transfer, or otherwise dispose of any property or rights of A;

- (c) transfer or otherwise dispose of any liabilities of A;
 - (d) transfer any financial products (in respect of which A is the issuer).
- (2) A sale, transfer, or disposal may be made to any person or persons, and on any terms and conditions, that the Bank thinks fit.

Example

Deposit taker A is in resolution. A's business has 3 main parts: residential property lending, rural lending, and other business lending.

The Bank transfers A's residential property lending business to another deposit taker.

The Bank then forms a company B under **section 297** to act as a bridge institution. The Bank transfers the rural lending business to B.

The Bank also forms a company C under **section 297** to manage A's other property. The Bank transfers the property to C.

Compare: 1989 No 157 s 132(1)

297 Bank may dispose of business undertaking etc to bridge institution or asset management vehicle

- (1) For the purposes of **section 296**, the Bank may do 1 or more of the following:
- (a) form and register a body corporate (**B**) under the Companies Act 1993;
 - (b) subscribe for or acquire all or any of the shares of B;
 - (c) make 1 or more sales, transfers, or dispositions to B under **section 296(1)(a) to (c)**;
 - (d) offer, issue, or sell all or any of the shares in B to any person, credited as fully or partly paid, on the terms and conditions that the Bank thinks fit;
 - (e) sell, transfer, or dispose of the whole or any part of the business undertaking of B to any 1 or more persons on the terms and conditions that the Bank thinks fit.
- (2) This section does not limit any other powers of the Bank.

Compare: 1989 No 157 s 132(2)

298 Body corporate is also subject to resolution

- (1) The body corporate (**B**) referred to in **section 297** must be treated as being in resolution.
- (2) However, **subsection (1)** does not apply if, before B is formed and registered, the Bank publishes a notice in the *Gazette* that states—
- (a) that the Bank intends to form and register a body corporate under **section 297**; and
 - (b) B's proposed name; and
 - (c) that **subsection (1)** will not apply to B.

- (3) If **subsection (1)** applies, the period of moratorium for B under **subpart 5** is initially the same as the period of moratorium that applies to the licensed deposit taker (A).
- (4) However, the Bank may exercise a power under **section 271(2)** in relation to B separately from A.

Compare: 1989 No 157 s 123(4)

299 Consents not required under other legislation or agreement, and transactions do not constitute breach

- (1) The provisions of any legislation or agreement requiring any consent, licence, permission, clearance, or other authority do not apply to any of the following:
 - (a) a sale, transfer, or other disposition under **section 296(1)(a) to (c) or 297(1)(c) or (e)**:
 - (b) an offer, issue, sale, transfer, or other disposition of financial products under **section 296(1)(d), 297(1)(d), or 307**.
- (2) A sale, transfer, disposition, offer, or issue referred to in **subsection (1)** does not constitute a breach or repudiation of any agreement entered into by the licensed deposit taker with any person.

Compare: 1989 No 157 s 133

300 Bank may sell, transfer, or dispose of property despite security interest

A Bank may exercise a power under **section 296 or 297** in respect of any property despite the existence, and the terms and conditions, of any security interest over the property in favour of any other person.

Compare: 1989 No 157 s 134(1)

301 When proceeds of sale of licensed deposit taker's property must be paid to holder of security interest

- (1) This section applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any property under **section 296(1)**; and
 - (b) the property is subject to a security interest (other than a security interest of the kind described in **section 304**).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or otherwise disposing of the property.

Compare: 1989 No 157 s 134(2)

302 When property continues to be subject to security interest

If the Bank sells, transfers, or otherwise disposes of any property of the licensed deposit taker to a body corporate formed and registered under **sec-**

tion 297(1)(a) and the property is subject to a security interest, the property continues to be subject to the security interest.

Compare: 1989 No 157 s 134(3)

303 When proceeds of sale of shares or property of new body corporate must be paid to holder of security interest

- (1) This section applies if—
 - (a) the Bank sells, transfers, or otherwise disposes of any shares in B, and any property of B is subject to a security interest (other than a security interest of the kind described in **section 304**); or
 - (b) the Bank sells, transfers, or otherwise disposes of any property of B, and the property is subject to a security interest (other than a security interest of the kind described in **section 304**).
- (2) The person entitled to the security interest must be paid out of the proceeds of sale, transfer, or other disposition in priority to all other claims other than the Bank's costs in selling, transferring, or disposing of the shares or property.
- (3) In this section, **B** is a body corporate that is formed and registered under **section 297(1)(a)**.

Compare: 1989 No 157 s 134(4), (5)

304 Kind of security interest referred to in various sections

- (1) The kind of security interest referred to in **sections 301 and 303** is a security interest that—
 - (a) is over all or any part of the licensed deposit taker's or body corporate's accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
 - (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time the licensed deposit taker entered resolution and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of the account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation); and
 - (d) is not a security interest referred to in **subsection (3)**.
- (2) In this section, **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (3) For the purposes of **subsection (1)(d)**, the security interest is a security interest over accounts receivable, inventory, or both to the extent that the security

interest secures payment or performance of an obligation under or in relation to a qualifying derivative and—

- (a) the counterparties to the derivative are—
 - (i) 2 qualifying counterparties; or
 - (ii) a qualifying counterparty and an overseas person; and
 - (b) before the exercise of rights to enforce the security interest, the collateral is transferred or otherwise dealt with so as to be in the possession or under the control of—
 - (i) the enforcing counterparty; or
 - (ii) another person (who is not the grantor) on behalf of the enforcing counterparty, under the terms of an arrangement evidenced in writing.
- (4) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in **subsection (3)** have in that subsection the same meanings as in that section.
- (5) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of **subsection (3)(b)** (and those modifications include treating references to section 42(10)(b) of that Act as references to **subsection (3)(b)** of this section).

Compare: 1989 No 157 s 134(3)

305 Proof of transactions

- (1) **Subsection (2)** applies if—
- (a) a person presents to a registrar an instrument transferring or otherwise disposing of any property of a licensed deposit taker or any shares in, or property of, a body corporate formed and registered under **section 297(1)(a)**; and
 - (b) the instrument—
 - (i) is executed, or purports to be executed, by or on behalf of the licensed deposit taker or body corporate; and
 - (ii) contains a statement that the transfer or other disposition of the property of the deposit taker, or the shares in, or property of, the body corporate, is made under **section 296 or 297**.
- (2) The instrument is, in the absence of evidence to the contrary, sufficient proof that the transfer or other disposition is made under **section 296 or 297**.
- (3) If the Bank presents to a registrar a certificate signed by or on behalf of the Bank that states that the amount secured by a security interest over any property of a licensed deposit taker or a body corporate formed and registered under **section 297(1)(a)** has been paid, the certificate is, in the absence of evidence

to the contrary, sufficient proof that the amount secured by the security interest has been repaid.

- (4) In this section, **registrar** means the Registrar-General of Land, a Registrar of Deeds, or any other person required under any legislation to keep any register.

Compare: 1989 No 157 s 135

306 Provisions applying where liabilities included in sale

- (1) If all or any part of a liability of a licensed deposit taker (**A**) is included in any sale or other disposition under **section 296**,—

- (a) A, as from the date of the sale, transfer, or other disposition, is relieved from all its obligations in respect of the liability, or part of it; and
- (b) the person entitled to performance in respect of the liability may enforce performance of the liability or part of it against the person to whom the business undertaking is sold, transferred, or otherwise disposed of in the same manner and to the same extent as the person was entitled to enforce performance against A; and
- (c) the inclusion of part of a liability does not relieve A from any obligation in respect of any part of the liability not included in the sale, transfer, or other disposition.

- (2) If all or any part of a liability of a body corporate formed and registered under **section 291**, or all or any part of a liability relating to the business carried on by an overseas person, is included in the sale, transfer, or other disposition, **subsection (1)(a)** does not relieve any overseas person from any obligation in respect of that liability.

Compare: 1989 No 157 s 137

Bank's power to issue deposit taker's financial products

307 Bank may offer and issue deposit taker's financial products

- (1) The Bank may offer and issue any financial products in respect of which a licensed deposit taker in resolution (**A**) is the issuer (for example, shares in A or debt securities in respect of which A is liable to repay money owing under the securities).
- (2) An offer and issue of financial products may be made to any person or persons, and on any terms and conditions, that the Bank thinks fit.

Bank may suspend payment of money owing

308 Bank may suspend payment of money owing

- (1) The Bank may, in respect of a licensed deposit taker in resolution,—
- (a) suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person; and

- (b) cancel the obligation to provide funding to any person.
- (2) This section applies despite the terms of any agreement.
- (3) A suspension or cancellation does not constitute a breach or repudiation of any agreement entered into by the deposit taker with any person.
- (4) This section is subject to **section 397(1) to (3)**.
Compare: 1989 No 157 s 127(1), (2), (5)

309 Bank may not suspend or cancel obligation incurred after deposit taker enters resolution

Section 308 does not authorise the Bank to suspend the repayment of a deposit, or the payment of a debt, or the discharge of an obligation, or to cancel an obligation to provide funding, if the obligation to repay the deposit, or to pay the debt, or the obligation, was incurred by the licensed deposit taker after it enters resolution.

Compare: 1989 No 157 s 127(3)

310 Bank may not suspend payment of amount included in netted balance

- (1) **Section 308** does not authorise the Bank to suspend the payment of an amount that would be included in the calculation of a netted balance in accordance with—
 - (a) section 310C of the Companies Act 1993; or
 - (b) section 257 of the Insolvency Act 2006; or
 - (c) a designated FMI's rules.
- (2) However, **section 308** applies to the payment of the netted balance.

Compare: 1989 No 157 s 127(4)

Bank may disclaim property

311 Power to disclaim onerous property

- (1) The Bank has all of the powers conferred on a liquidator of a company by section 269 of the Companies Act 1993 and may exercise the powers in the same manner as if the Bank was the liquidator of a company in liquidation under that Act.
- (2) Section 269 of the Companies Act 1993 applies to the disclaimer of any property of the licensed deposit taker as if the property was property of a company to which that section applied.
- (3) This section does not limit **section 285**.

Compare: 1989 No 157 s 129(3)

Property may not be removed from New Zealand

312 Prohibition against removing property

- (1) A person must not, without the Bank's consent, transfer or remove from New Zealand any property of a licensed deposit taker that is in resolution.
- (2) A person commits an offence if the person contravenes **subsection (1)** and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$500,000 (or both):
 - (b) in the case of a body corporate, to a fine not exceeding \$5,000,000.
- (3) This section does not prevent a court from issuing an injunction or making any order to prevent any property from being removed from New Zealand.
- (4) **Subsection (1)** is subject to **section 397(1) to (3)**.

Compare: 1989 No 157 s 126

Bank may trace property

313 Power to trace property improperly disposed of

- (1) This section applies if—
 - (a) any property has been acquired by a person in circumstances where it is just and equitable that the person should hold it on trust for a licensed deposit taker in resolution; or
 - (b) any property has been improperly disposed of, whether or not the property has become subject to a trust.
- (2) The court may, if it thinks fit, make an order—
 - (a) that the property be transferred or delivered to the Bank;
 - (b) that any person who acquired or received the property, or their administrator, pay to the Bank a sum not exceeding the value of the property.
- (3) For the purpose of giving effect to the order, the court may make any further order that it thinks fit.
- (4) This section and **section 314** do not limit the Companies Act 1993.

Compare: 1989 No 157 s 138(1), (2), (4)

314 Order may not deprive good faith purchaser for value

An order under **section 313** does not deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.

Compare: 1989 No 157 s 138(3)

*High Court may give directions***315 High Court may give directions**

- (1) The High Court may, on an application made by the Bank, give directions concerning any of the following:
 - (a) the business or property of a licensed deposit taker in resolution:
 - (b) the management or administration of that business or property:
 - (c) the exercise of any powers under this subpart.
- (2) Every person is bound by the directions.

Compare: 1989 No 157 s 142

*Relationship between resolution and other legislation and processes***316 Application of certain provisions of Companies Act 1993**

- (1) Sections 275, 291A to 301, 310G, and 310I of the Companies Act 1993 apply to a licensed deposit taker (A) in resolution in all respects, and with all necessary modifications, as if—
 - (a) A was a company in liquidation under that Act; and
 - (b) the Bank was A's liquidator; and
 - (c) the time at which A entered resolution was the time at which the liquidation commenced.
- (2) The reference in section 275(4) of the Companies Act 1993 to clause 1(1)(a) of Schedule 7 of the Companies Act 1993 must be read as a reference to **section 326(1)** of this Act.

Compare: 1989 No 157 s 139

317 Application of other Acts

- (1) The following do not apply in relation to a licensed deposit taker in resolution:
 - (a) sections 120, 207P to 209C, and 214 of the Companies Act 1993:
 - (b) sections 129 and 291A to 296D of the Companies Act 1993 (to the extent that those sections would otherwise apply to a transaction or disposition under an agreement entered into after the licensed deposit taker enters into resolution):
 - (c) the Receiverships Act 1993:
 - (d) sections 76 and 91 to 106 of the Building Societies Act 1965.
- (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with the recommendation of the Bank, declare that the provisions of any Act that correspond with the provisions referred to in **subsection (1)** do not apply to a licensed deposit taker in resolution.

- (3) An Order in Council made under **subsection (2)** is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 153(4), (5), (7), (8)

318 Bank and other persons are not directors under any legislation

For the purposes of this Act, any other legislation, or any other rule of law, the Bank or any other person must not be treated as being a director of a licensed deposit taker by reason only of the fact that the Bank or other person is performing or exercising any functions, powers, or duties under this Part.

Compare: 1989 No 157 s 153(9)

319 Prior insolvency process must cease

- (1) If a licensed deposit taker (A) enters resolution and A is already being wound up or is already in liquidation, receivership, or voluntary administration,—
- (a) the winding up, liquidation, receivership, or voluntary administration must cease for so long as A continues to be in resolution; and
 - (b) the person appointed as liquidator, receiver, or administrator is discharged.
- (2) If an Order in Council under **section 268(1)** ends the resolution, the winding up, liquidation, receivership, or voluntary administration of A revives as if it had not ceased by reason of this section unless the order provides otherwise.
- (3) **Subsection (2)** applies subject to the terms and conditions specified in the order.
- (4) If the winding up, liquidation, receivership, or voluntary administration revives, the person specified in the order as such becomes the liquidator, receiver, or administrator of A for the time being.

Compare: 1989 No 157 s 143

320 Continuation of resolution if restored

- (1) This section applies if a licensed deposit taker (A)—
- (a) has been removed from the New Zealand register under section 317 of the Companies Act 1993 while in resolution; but
 - (b) is restored to the New Zealand register under section 328 of the Companies Act 1993.
- (2) A continues to be in resolution from the time A is restored.
- (3) However, **subsection (2)** does not apply if, before A is restored, the Bank publishes a notice in the *Gazette* that states that **subsection (2)** will not apply to A.

Compare: 1989 No 157 s 143A

*Auditors***321 Appointment of auditors**

- (1) The Bank must appoint 1 or more persons (whether as individuals or as the members of a firm) to be the auditor of a licensed deposit taker in resolution.
- (2) The person or persons that are appointed must be licensed auditors (within the meaning of section 6(1) of the Auditor Regulation Act 2011).
- (3) An appointment must be for a term of up to 2 years, but a person appointed as auditor continues in office until a successor comes into office.
- (4) A person appointed as auditor is eligible for reappointment.

Compare: 1989 No 157 s 154(1)–(3)

322 Existing auditor ceases to hold office

A person holding office as auditor of a licensed deposit taker at the time that it enters resolution ceases to hold that office but may be appointed under **section 321**.

Compare: 1989 No 157 s 154(7)

323 Bank may remove auditor from office

- (1) The Bank may, at any time for just cause, remove the auditor from office.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Bank:
 - (a) inability to perform the functions of the office:
 - (b) bankruptcy:
 - (c) neglect of duty:
 - (d) misconduct.
- (3) The removal must be made by written notice to the auditor.
- (4) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 1989 No 157 s 154(4), (8)

324 Auditor's fees

The auditor must be paid the fees that are fixed by the Bank.

Compare: 1989 No 157 s 154(5)

325 Auditor's rights

- (1) An auditor has a right of access at all times to the information of the licensed deposit taker.

- (2) The auditor is entitled to require from the licensed deposit taker's directors and employees the information and explanations that the auditor thinks necessary for the performance of the auditor's duties.

Compare: 1989 No 157 s 154(6)

Miscellaneous provisions

326 Expenses of resolution

- (1) All costs, charges, and expenses properly incurred by Bank in the performance or exercise of its functions and powers under this subpart and **subparts 4, 5, 7, and 8** are payable out of the property of any 1 or more of the following in priority to all other claims:

- (a) the licensed deposit taker;
- (b) a subsidiary or other associated person that is in resolution;
- (c) a body corporate formed and registered under **section 291 or 297**.

- (2) The Bank may apportion the costs, charges, and expenses between those persons in the manner that the Bank thinks fit.

Compare: 1989 No 157 s 148

327 Offence to destroy, alter, or conceal records

- (1) A person commits an offence against this Act if,—
- (a) with intent to defeat the purposes of this Part, they destroy, alter, or conceal any information of, or relating to, a licensed deposit taker in resolution or send or attempt to send out of New Zealand any such information; or
 - (b) they fail or refuse to answer, to the best of their knowledge and ability, any question that they are asked by or behalf of the Bank in relation to any such information or any property; or
 - (c) they wilfully give a false or misleading answer to that question.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.
- (3) If, in any prosecution for an offence under this section, it is proved that the person charged with the offence destroyed, altered, or concealed, or sent or attempted to send out of New Zealand, any information of the kind referred to in **subsection (1)**, it must be presumed, in the absence of evidence to the contrary, that the person did so with intent to defeat the purposes of this Part.

Compare: 1989 No 157 s 151

328 Bank may change balance date

- (1) The Bank may change the balance date of a licensed deposit taker that is in resolution to any date that the Bank thinks fit.
- (2) The Commissioner of Inland Revenue's approval of the change is not required.
- (3) Sections 42 and 43 of the Financial Reporting Act 2013 do not apply in relation to the change.

329 Annual report on conduct of resolution

The Bank must, within 4 months after the balance date of a licensed deposit taker (A) that is in resolution,—

- (a) prepare a report on the conduct of the resolution of A and of its associated persons during the accounting period ending on that date; and
- (b) lodge the report with the Registrar of Financial Service Providers together with the documents that are lodged under section 461H of the FMCA in relation to A; and
- (c) give the Minister a copy of those documents.

330 Rules relating to subsidiaries do not apply

- (1) Nothing in subpart 8 of Part 2 of the Reserve Bank of New Zealand Act 2021 (subsidiaries) applies to anything the Bank does in the performance or exercise of its functions, powers, or duties under this subpart and **subparts 4, 5, 7, and 8**.
- (2) No body corporate formed and registered in accordance with this subpart is a subsidiary of the Bank under the Reserve Bank of New Zealand Act 2021.

Subpart 7—Minister may give directions**331 When subpart applies**

- (1) This subpart applies if—
 - (a) either or both of the following apply:
 - (i) the Bank proposes to exercise a power under this Part in a particular manner in relation to a licensed deposit taker (A) that is in resolution:
 - (ii) the Minister considers that the Bank should exercise a power under this Part in a particular manner in relation to A; and
 - (b) public money is involved in the resolution; and
 - (c) the Minister is satisfied that,—
 - (i) in the case of **paragraph (a)(i)**, the exercise of the power in the manner referred to in that subparagraph would [present a material risk to the prudent management of the fiscal risks facing the Government]:

- (ii) in the case of **paragraph (a)(ii)**, the exercise of the power in the manner referred to in that subparagraph would [reduce a material risk to the prudent management of the fiscal risks facing the Government].
- (2) In this subpart, **public money is involved** in a resolution if the Crown has incurred a financial liability or commitment, or has invested or otherwise made available public money, in connection with dealing with A's financial distress or other difficulties (for example, a Crown guarantee or indemnity, a Crown loan, or a Crown acquisition of A's shares).
- (3) However, public money is not involved in a resolution merely because—
- (a) the Bank uses its own financial resources in the resolution; or
 - (b) money is applied under **subpart 5 of Part 6** (use of the fund to support resolution actions); or
 - (c) grants or advances are made under **subpart 8 of Part 6** (deficiency in fund); or
 - (d) compensation is paid under **subpart 9** (compensation for pre-resolution creditors or shareholders that are worse off).

332 Minister may direct Bank relating to exercise of resolution power

The Minister may direct the Bank to do 1 or more of the following:

- (a) to not exercise a power in the manner referred to in **section 331(1)(a)(i)**;
- (b) to exercise a power in the manner referred to in **section 331(1)(a)(i)** only on the terms and conditions that are specified in the direction;
- (c) to exercise a power in the manner referred to in **section 331(1)(a)(ii)**;
- (d) to exercise a power in the manner referred to in **section 331(1)(a)(ii)** on the terms and conditions that are specified in the direction;
- (e) to have regard to the matters specified in the direction before exercising a power;
- (f) to take any other action [that is specified in the direction] [that the Bank thinks fit] to avoid or minimise, or otherwise manage, the risk referred to in **section 331(1)(c)**.

333 Procedural requirements

- (1) The Minister may give a direction under this subpart only if the Minister is satisfied that—
- (a) giving the direction is necessary or desirable for the purpose of avoiding or minimising, or otherwise managing, the risk referred to in **section 331(1)(c)**; and

- (b) giving the direction is the most appropriate way of avoiding or minimising, or otherwise managing, the risk; and
 - (c) [*provision to come to clarify how the direction must relate to the resolution purposes in **clause 245(1)(a), (b), and (c)***]; and
 - (d) the extent of the direction is not broader than is reasonably necessary to address the matters that gave rise to the direction.
- (2) This section does not limit section 174 of the Reserve Bank of New Zealand Act 2021, which imposes additional procedural requirements for the direction.

Subpart 8—Resolution manager

334 Bank may appoint resolution manager

- (1) The Bank may appoint 1 or more persons as resolution managers.
- (2) The Bank makes an appointment by giving notice of the appointment to the person who is appointed.
- (3) The notice must state the date on which, and time at which, the appointment takes effect.
- (4) A resolution manager must be an employee of the Bank or any other person that the Bank is satisfied is suitably qualified.
- (5) Nothing in this subpart prevents the Bank from appointing a person as a resolution manager to replace another resolution manager who has had their appointment terminated, has resigned, or has died.

335 Delegation of functions, powers, and duties

- (1) The Bank must specify in the notice of appointment of a resolution manager the functions, powers, or duties of the Bank under **subpart 6** that are delegated to the resolution manager under section 74 of the Reserve Bank of New Zealand Act 2021.
- (2) If the Bank appoints 2 or more persons as resolution manager, each notice of appointment must state whether the delegated functions, powers, or duties must be performed or exercised by those persons acting together or may be performed or exercised individually.

336 Appointment notice must be published

The Bank must publish the notice of appointment in the *Gazette* and on the Bank's Internet site.

337 Resolution manager to comply with directions of Bank

A resolution manager must comply with any directions given in writing by the Bank relating to the manager's performance or exercise of any functions, powers, or duties.

Compare: 1989 No 157 s 120

338 Resolution manager must consult and have regard to Bank advice

- (1) The resolution manager must, when performing or exercising any functions, powers, or duties under **subpart 6**,—
 - (a) consult the Bank to the extent required by the Bank; and
 - (b) have regard to the Bank’s advice.
- (2) The resolution manager must, in the manner specified by the Bank, provide the reports that the Bank may require about the state of the affairs, business, and resolution of the licensed deposit taker in resolution.

339 Bank may terminate appointment of resolution manager

- (1) The Bank may, at any time for just cause, terminate the appointment of a resolution manager.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Bank:
 - (a) inability to perform the functions of the office;
 - (b) bankruptcy;
 - (c) neglect of duty;
 - (d) misconduct.
- (3) The removal must be made by written notice to the resolution manager.
- (4) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 1989 No 157 s 141(1)

340 Resolution manager may resign

A resolution manager may resign office by notice in writing to the Bank.

Compare: 1989 No 157 s 141(2)

341 Resolution manager continues in office

- (1) A resolution manager (**A**) continues in office until a successor is appointed despite—
 - (a) their resignation; or
 - (b) their period of appointment having expired.
- (2) **Subsection (1)** does not apply if the Bank informs A by written notice that no successor is to be appointed at that time.

Compare: 1989 No 157 s 141(4)

342 Licensed deposit taker continues to be in resolution

A licensed deposit taker continues to be in resolution even though a resolution manager who is acting in relation to the resolution—

- (a) has had their appointment terminated; or
- (b) has resigned from office; or
- (c) has died; or
- (d) has ceased to hold office because of the expiry of their period of appointment.

Compare: 1989 No 157 s 141(5)

Subpart 9—No creditor or shareholder worse off**343 Interpretation in this subpart**

In this subpart,—

affected entity—

- (a) means a licensed deposit taker, or an associated person of a licensed deposit taker, that is or has been in resolution; but
- (b) does not include—
 - (i) an overseas licensed deposit taker; or
 - (ii) an associated person of a licensed deposit taker that is an overseas person

creditor has the same meaning as in section 227 of the Companies Act 1993

pre-resolution creditor, in relation to an affected entity, means a person who was a creditor of the entity immediately before it entered into resolution

pre-resolution shareholder,—

- (a) in relation to an affected entity that is a company within the meaning of the Companies Act 1993, means a person who was a shareholder of the affected entity (within the meaning of section 96 of that Act) immediately before it entered into resolution:
- (b) in relation to an affected entity that is a building society, means a person who was a member of the affected entity (within the meaning of section 2 of the Building Societies Act 1965) immediately before it entered into resolution:
- (c) in relation to an affected entity that is a credit union, means a person who was a member of the affected entity (within the meaning of the Friendly Societies and Credit Unions Act 1982) immediately before it entered into resolution:
- (d) in relation to an affected entity that is not a company, a building society, or a credit union, means a person who was of a kind prescribed by the regulations immediately before the affected entity entered into resolution

valuer, in relation to an affected entity, means the person or persons appointed under **section 345**.

344 Eligibility for compensation under this subpart

- (1) A pre-resolution creditor or pre-resolution shareholder of an affected entity is eligible for a payment of compensation under this subpart if the creditor or shareholder has received, is receiving, or is likely to receive, as a result of the resolution of the entity, less favourable treatment than would have been the case had a liquidation of the entity under New Zealand law commenced immediately before the entity entered into resolution.
- (2) The amount of compensation is the amount calculated under **sections 349 to 352**.

Valuer's role

345 Minister must appoint valuer

- (1) The Minister must, as soon as is reasonably practicable after an affected entity enters into resolution, appoint 1 or more persons as a valuer in relation to the entity for the purposes of this subpart.
- (2) The Minister makes an appointment by giving notice of the appointment to the appointee.
- (3) The notice must state the date on which, and time at which, the appointment takes effect.
- (4) The Minister may appoint the same person or different persons as the valuer for a licensed deposit taker and any of its associated persons.
- (5) Nothing in this subpart prevents the Minister from appointing a person as a valuer to replace another valuer who has had their appointment terminated, has resigned, or has died.
- (6) *See also sections 371 to 373*, which relate to the appointment of a valuer.

346 Functions of valuer

The functions of a valuer are to—

- (a) make a valuation in relation to an affected entity; and
- (b) decide whether any pre-resolution creditor or pre-resolution shareholder is eligible for a payment of compensation under this subpart and, if so, the amount of that compensation.

347 Valuer must act in manner prescribed by regulations

- (1) The valuer must perform or exercise the valuer's functions, powers, and duties in the manner prescribed by the regulations.
- (2) The regulations may, in particular, require a valuer to do 1 or more of the following:

- (a) to apply, or not to apply, specified methods of valuation:
 - (b) to apply specified principles:
 - (c) to assess values or average values at specified dates or over specified periods:
 - (d) to take specified matters into account in a specified manner:
 - (e) to disregard specified matters:
 - (f) not to take specified matters into account.
- (3) The regulations may also require or permit a valuer to make assumptions.
- (4) The regulations may prescribe—
- (a) the manner in which the Bank, pre-resolution creditors, pre-resolution shareholders, or other persons may or must give information, or submit claims, to the valuer; and
 - (b) the manner in which the valuer must or may deal with the information and those claims.
- (5) **Subsections (2) to (4)** do not limit **subsection (1)**.

348 Valuer must prepare list of pre-resolution creditors and shareholders

The valuer must prepare a list of every known pre-resolution creditor or pre-resolution shareholder of the affected entity and, if known, each creditor's or shareholder's address for communications (which may be an electronic address).

How valuer must determine compensation

349 Valuer must determine compensation by reference to difference between liquidation value and resolution value

- (1) The valuer must assess—
- Liquidation value*
 - (a) what each pre-resolution creditor or pre-resolution shareholder (or class of those persons) would have been likely to receive had a liquidation of the affected entity under New Zealand law commenced immediately before it entered into resolution; and
 - Resolution value*
 - (b) what each pre-resolution creditor or pre-resolution shareholder (or class of those persons) has received, is receiving, or is likely to receive as a result of the resolution.
- (2) If the valuer considers that, in relation to a pre-resolution creditor or pre-resolution shareholder (or class of those persons), the resolution value is less favourable than the liquidation value, the valuer must determine the compensa-

tion payable to the pre-resolution creditor or pre-resolution shareholder (or class).

- (3) The valuer must determine the amount of compensation payable by reference to the difference in treatment assessed under **subsection (2)** and on the basis of the fair and equitable value of that difference in treatment.
- (4) The valuer's assessment under **subsection (1)** must not take into account any debt owing by the licensed deposit taker to a pre-resolution creditor or pre-resolution shareholder if the debt was incurred by the licensed deposit taker after it entered resolution.
- (5) In this subpart,—
 - liquidation value** means the amount assessed under **subsection (1)(a)**
 - resolution value** means the amount assessed under **subsection (1)(b)**.
- (6) This section does not limit **section 347**.

350 Liquidation value

- (1) The following applies to a valuer's assessment of the liquidation value:
 - (a) the valuer must assume that the Bank and the Crown do not, directly or indirectly, provide any financial support or assistance in connection with the liquidation:
 - (b) the valuer must discount the liquidation value back to the time that the affected entity entered into resolution.
- (2) This section does not limit **section 347**.

351 Resolution value

- (1) The valuer must, when assessing the resolution value, discount the resolution value back to the time that the affected entity entered into resolution.
- (2) This section does not limit **section 347**.

352 Discount rate

For the purpose of **sections 350(1)(b) and 351**, the valuer must apply—

- (a) a discount rate that—
 - (i) is set out in, or determined in accordance with, the regulations; or
 - (ii) if **subparagraph (i)** does not apply, is determined by the valuer (on the basis of assumptions referred to in **paragraph (b)**); and
- (b) any assumptions determined by the valuer that—
 - (i) are not inconsistent with any assumptions prescribed by the regulations; and
 - (ii) are fair and reasonable in the circumstances.

*Valuer's report***353 Valuer's draft report**

- (1) After acting under **sections 347 to 352**, the valuer must prepare a draft report setting out—
 - (a) the valuer's decision on—
 - (i) whether each pre-resolution creditor or pre-resolution shareholder of the affected entity (or each class of those persons) is eligible for compensation under this subpart; and
 - (ii) the amount of compensation to be paid to each pre-resolution creditor or pre-resolution shareholder (or each class of those persons); and
 - (b) a description of the methods, principles, and assumptions that the valuer has applied, and how they have been applied, in sufficient detail to enable the Minister and the Bank to make an informed assessment of the draft report and the valuer's decision; and
 - (c) the information (if any) that is prescribed by the regulations.
- (2) The valuer may set out an amount of compensation by specifying the manner in which the amount must be calculated.

354 Valuer must give draft report to Minister and Bank

The valuer must provide the draft report to the Minister and the Bank as soon as is reasonably practicable after it is prepared.

355 Minister or Bank may require valuer to reconsider

- (1) This section applies if, after receiving the draft report, the Minister or the Bank is of the view that—
 - (a) the valuer's decision has not been made in accordance with **sections 347 to 352**; or
 - (b) the valuation report was not prepared in accordance with **section 353**; or
 - (c) the valuer should have had regard to any additional information not taken into account in the draft report.
- (2) The Minister or the Bank (or both) may, by notice, require the valuer to reconsider the draft report or any aspect of the draft report in the manner that the Minister or the Bank specifies in the notice.

356 Valuer must finalise and publish report

- (1) If a notice is given under **section 355**, the valuer must—
 - (a) reconsider the draft report or any aspect of the draft report in the manner specified in the notice; and

- (b) finalise the report; and
 - (c) provide the finalised report to the Minister and the Bank.
- (2) If no notice is given under **section 355** within 20 working days after the draft report is given under **section 354**, the valuer must—
- (a) finalise the report; and
 - (b) provide the finalised report to the Minister and the Bank.
- (3) The Bank must publish the report on its Internet site.
- (4) The regulations may require or permit the Bank to redact information from the copy of the report that is published (for example, to protect privacy, confidentiality, or commercially sensitive information).
- (5) The Bank may also redact from the copy of the report that is published any information if the Bank considers there would be a good reason for withholding the information under the Official Information Act 1982 if a request for that information were made under that Act.

Compensation notice and payments

357 Valuer must send compensation notice

- (1) The valuer must, within 20 working days after the copy of the finalised report is published, send to each pre-resolution creditor and each pre-resolution shareholder a notice (a **compensation notice**).
- (2) A compensation notice sent to a pre-resolution creditor or pre-resolution shareholder (A) must set out—
- (a) the valuer's decision on—
 - (i) whether A is eligible for compensation; and
 - (ii) the amount of compensation payable to A (if any); and
 - (b) if compensation is payable to A, information from the Bank about how the compensation will be paid, including information about anything A must do before the compensation is paid (for example, a requirement to give to the Bank A's account details); and
 - (c) a brief description of A's appeal rights under **section 367**, including the time within which an appeal may be brought; and
 - (d) all other information that is prescribed by the regulations.

358 Bank must make available public information if compensation notice cannot be sent

- (1) **Section 357** does not apply if it is not reasonably practicable to send a compensation notice to a pre-resolution creditor or a pre-resolution shareholder (or to a class of those persons).

- (2) If **subsection (1)** is relied on, the Bank must instead make the information that is prescribed by the regulations available to the public in the manner prescribed by those regulations.

359 Bank must manage and administer payments of compensation

The Bank must manage and administer payments of compensation under this subpart.

360 Bank must pay in accordance with regulations

- (1) This section applies if—
- (a) the valuer has sent a compensation notice to a person (A) that specifies that A is eligible for compensation of a particular amount; and
 - (b) either—
 - (i) no appeal has been brought under **section 367** in relation to A within the period specified in **section 368**; or
 - (ii) such an appeal has been brought, and it has been determined by, or under, an order of the High Court that A is eligible for compensation of a particular amount.
- (2) The Bank must pay the compensation to, or on account of, A—
- (a) in the manner prescribed by the regulations; and
 - (b) otherwise in the manner that the Bank thinks fit.
- (3) The amount of compensation is—
- (a) the amount determined by the valuer (unless **paragraph (b)** applies); or
 - (b) the amount determined by, or under, an order of the High Court.
- (4) The Bank's power to decide the manner in which compensation is paid includes deciding to pay it to a person to hold on behalf of A (whether or not on trust).

361 Crown must provide money necessary to pay compensation

- (1) This section applies if an amount paid under **subpart 5 of Part 6** (use of fund to support resolution) is not sufficient to pay the entitlements to compensation under this subpart.
- (2) The Minister must provide to the Bank out of public money, without further appropriation than this section, the money that is necessary to meet the deficiency.

362 Transfer of entitlement by assignment or operation of law

- (1) This section applies if—
- (a) a person (A) is—

- (i) a pre-resolution creditor who has or may have an entitlement to compensation under this subpart in respect of a debt owing by the affected entity; or
 - (ii) a pre-resolution shareholder who has or may have an entitlement to compensation under this subpart in respect of shares issued by the affected entity; and
 - (b) the debt or the shares are transferred (in whole or in part) by assignment or by operation of law to a person (**B**); and
 - (c) the transfer occurs before the compensation is paid; and
 - (d) the Bank has been given notice of the transfer in the prescribed manner before the compensation is paid.
- (2) If this section applies,—
- (a) A's entitlement (if any) to compensation under this subpart in respect of the transferred debt or shares is transferred to B; and
 - (b) B must be treated as being a pre-resolution creditor or shareholder to the extent that A's entitlement has been transferred.
- (3) However, this section does not apply if an agreement between A and B provides otherwise.

Valuer's information-gathering power

363 Valuer may require person to supply information for purposes of subpart

- (1) If the valuer considers it necessary or desirable for the purposes of performing or exercising the valuer's functions, powers, or duties under this subpart, the valuer may, by notice to any relevant person, require the person to do 1 or more of the following:
- (a) give to the valuer any information, or class of information, that is specified in the notice:
 - (b) produce for inspection any documents, or class of documents, that is specified in the notice:
 - (c) if necessary, reproduce, or assist in reproducing, in usable form, information recorded or stored in those documents.
- (2) In this section, **relevant person** means any of the following:
- (a) the Bank:
 - (b) the affected entity, any associated person of the affected entity, or any creditor or shareholder of the affected entity:
 - (c) any financial service provider.
- (3) The relevant person must comply with a requirement under **subsection (1)** within the period, and otherwise in the manner, that is specified in the notice.

- (4) The valuer may take copies of any documents produced for inspection under **subsection (1)**.

364 Offence for failing to supply information

- (1) A person referred to in **section 363(2)(b) or (c)** commits an offence if they refuse or fail, without reasonable excuse, to comply with a notice under **section 363**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
- (a) in the case of an individual, a fine not exceeding \$50,000 (or both);
 - (b) in the case of a body corporate, a fine not exceeding \$500,000.

365 Person required to give information has same privileges as witnesses in court

A person who is required to give information under this subpart has the same privileges in relation to that duty as witnesses have in a proceeding before a court.

366 Use of information and confidentiality

- (1) A valuer who has information in their capacity as a valuer, being information that would not otherwise be available to them, must not make use of or act on the information, except—
- (a) for the purposes of performing or exercising the valuer’s functions, powers, and duties; or
 - (b) as required by law.
- (2) **Subpart 3 of Part 8** (confidentiality) applies to information given to a valuer under this subpart (and to information derived from or based on that information)—
- (a) as if references to the Bank were references to the valuer; and
 - (b) with all other necessary modifications.
- (3) A valuer who intentionally or recklessly contravenes **subsection (1)**, or discloses information in contravention of **section 418** (as applied by this section), commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

Appeals

367 Appeal against valuer’s decision

- (1) The Minister or the Bank (or both) may appeal to the High Court against a valuer’s decision on either or both of the following:
- (a) whether a person, a class of persons, or persons generally are eligible for compensation:

- (b) the amount of compensation to be paid to all or any of those persons.
- (2) A person (A) may appeal to the High Court against a valuer's decision on either or both of the following:
 - (a) whether A is eligible for compensation:
 - (b) the amount of compensation to be paid to A.

368 Time for bringing appeal

An appeal must be brought within 3 months after the date on which the finalised report is first published under **section 356**.

369 No right of appeal from High Court's decision

There is no right of appeal against the decision of the High Court on an appeal under **section 367**.

370 No limit on judicial review

Nothing in this subpart limits or affects the Judicial Review Procedure Act 2016.

Miscellaneous provisions

371 Who may be appointed as valuer

- (1) A person may be appointed as a valuer in relation to an affected entity (A) if—
 - (a) the Minister is satisfied that the person—
 - (i) has the knowledge, skills, and experience that are prescribed by the regulations; and
 - (ii) meets the independence requirements; and
 - (b) the person is not disqualified under **subsection (3)**.
- (2) The **independence requirements** are as follows:
 - (a) a requirement that the person has not, within the 2 years immediately before A enters into resolution, been any of the following:
 - (i) a member of the board of the Bank;
 - (ii) a member of the monetary policy committee;
 - (iii) an employee of the Bank or of a subsidiary of the Bank;
 - (b) the requirements about independence from the Bank that are prescribed by the regulations.
- (3) The following persons are disqualified from being appointed or acting as a valuer in relation to A:
 - (a) a creditor of A:

- (b) a person who has, within the 2 years immediately before A enters into resolution, been a director, an auditor, or a receiver of A or of an associated person:
 - (c) a person who has, within the 2 years immediately before A enters into resolution, been a director of a creditor of A:
 - (d) a person who has, or who has had, within the 2 years immediately before A enters into resolution,—
 - (i) a direct interest in a share issued by A; or
 - (ii) an interest, direct or indirect, in 5% or more of any class of shares issued by a creditor of A (but only if the person is aware that they have the interest):
 - (e) a person who has—
 - (i) a direct interest in a share issued by an associated person of A; or
 - (ii) an indirect interest in 5% or more of any class of shares issued by an associated person of A:
 - (f) if an instrument confers a power to appoint a receiver of any property of A, a person who is disqualified by the instrument from acting as the receiver of any property of A:
 - (g) a person who is a relative of a person described in any of **paragraphs (a) to (f)**:
 - (h) a person who has, or whose firm has, within the 2 years immediately before A enters into resolution,—
 - (i) provided professional services to A; or
 - (ii) had a continuing business relationship with A, its majority shareholder, or any of its directors, or with any of A's shareholders that (under its constitution or any other agreement) have a power to appoint or remove a director of A:
 - (i) a person to whom a prohibition order applies (within the meaning of the Companies Act 1993):
 - (j) a person who the Bank has suspended, removed, or replaced as a director of A.
- (4) A person is not disqualified under **subsection (3)(h)**—
- (a) if the professional services are provided, or the relationship arises, by reason only of the appointment of the person, or of the person's firm,—
 - (i) by, or at the instigation of, A or a creditor or other party that has an actual or potential financial interest in A; and
 - (ii) to investigate or to advise on the solvency of A or to monitor the affairs of A; or
 - (b) if the Minister consents to the appointment of the person.

- (5) The Minister must, before giving their consent under **subsection (4)(b)**, be satisfied that the provision of the professional services, or the continuing business relationship, will not have a materially adverse effect on the person's ability to perform or exercise their functions, powers, or duties.
- (6) If **subsection (4)(a)** applies, **subsection (3)(a) or (c)** does not disqualify a person merely because the person is (or was) a creditor, or a director of a creditor, of A as a consequence of the appointment referred to in **subsection (4)(a)**.

372 Application of subpart to joint valuers

If a notice or notices under **section 345** appoint 2 or more persons as valuer in relation to an entity, the Minister must state in the notice or notices whether the powers conferred by this subpart must be exercised by those persons acting together or may be exercised individually.

373 Appointment notice must be published

- (1) The Minister must publish the notice of appointment of a valuer in the *Gazette*.
- (2) The Bank must publish the notice of appointment on the Bank's Internet site.

374 Minister may terminate appointment of valuer

- (1) The Minister may, at any time for just cause and after consulting the Bank, terminate the appointment of a valuer.
- (2) In this section, **just cause** means any of the following proved to the satisfaction of the Minister:
 - (a) inability to perform the functions of the office:
 - (b) bankruptcy:
 - (c) neglect of duty:
 - (d) being disqualified for appointment under **section 371**:
 - (e) serious misconduct.
- (3) The removal must be made by giving written notice to the valuer.
- (4) The notice must—
 - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is given; and
 - (b) be published in the *Gazette*.

Compare: 1989 No 157 s 141

375 Valuer may resign

A valuer may resign office by giving written notice to the Minister.

Compare: 1989 No 157 s 141(2)

376 Valuer continues in office

- (1) A valuer (A) continues in office until a successor is appointed despite their resignation.
- (2) **Subsection (1)** does not apply if the Minister informs A by written notice that no successor is to be appointed at that time.

377 Valuer's costs, charges, and expenses

The Minister may pay to a valuer (A), out of a Crown Bank Account, the amounts that the Minister thinks fit in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, A.

378 Valuer's duties in relation to records

- (1) The valuer must—
 - (a) keep records and other documents relating to the performance or exercise of their functions, powers, or duties; and
 - (b) permit those records and other documents to be inspected by—
 - (i) the Bank; and
 - (ii) if the High Court so orders, a pre-resolution creditor or shareholder; and
 - (c) keep the records and other documents for not less than 7 years after the end date (or any longer period specified in a notice referred to in **subsection (2)**).
- (2) The Bank may, by notice given to the valuer before or after the end of the resolution, require any records and documents to be retained for longer than 7 years after the end date.
- (3) A valuer who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (4) The **end date** is the earlier of the following:
 - (a) the date of the valuer's finalised report under **section 356**;
 - (b) the date on which the valuer ceases to hold office under this subpart.

Subpart 10—Covered bonds

Interpretation relating to covered bonds

379 Interpretation

In this subpart, unless the context otherwise requires,—

cover pool, in relation to a covered bond programme, means property that—

- (a) is owned by the relevant covered bond SPV; and
- (b) secures the obligations of that SPV under the covered bond programme

cover pool monitor means a person that meets the requirements of **section 395(1)**

covered bond means a bond, note, or other debt security that has the following features:

- (a) it represents an unsecured obligation of the issuer; and
- (b) the principal and interest owing under the bond, note, or other debt security are guaranteed by a covered bond SPV; and
- (c) the obligations under that guarantee are secured by property that is owned by that SPV

covered bond programme means any programme of covered bonds under which, on the security of a single cover pool, covered bonds may be issued

covered bond SPV has the meaning given to it by **section 380**

issuer has the meaning given to it by **section 381**

own includes holding a beneficial, or legal, interest or entitlement

registered covered bond programme means a covered bond programme that has been registered under **section 388**

SPV means a special purpose vehicle.

Compare: 1989 No 157 s 139A

380 Meaning of covered bond SPV

In this subpart, **covered bond SPV** means, in relation to a covered bond programme, a person that—

- (a) is, or will be, the owner of property that has been, or will be, sold, assigned, or otherwise transferred to it by, or on behalf of, an issuer or an associated person of an issuer; and
- (b) has granted, or may grant, a security interest in the property for the benefit of the secured creditors under the covered bond programme; and
- (c) carries on a business of acting as covered bond guarantor under the covered bond programme (including any business incidental to that purpose); and
- (d) (other than as described in **paragraph (c)**) does not carry on any other kind of business.

Compare: 1989 No 157 s 139B

381 Meaning of issuer

(1) For the purposes of this subpart, **issuer**—

- (a) means—
 - (i) a licensed deposit taker that issues or intends to issue covered bonds, or guarantees covered bonds:

- (ii) an entity, or a member of a class of entities, specified in the regulations that issues or intends to issue covered bonds, or guarantees such covered bonds; and
- (b) includes a deposit taker referred to in **paragraph (a)(i)** that—
 - (i) has had its licence cancelled under **subpart 6 of Part 2**; and
 - (ii) has a registered covered bond programme.
- (2) However, if an issuer (**issuer A**) transfers all of the rights and obligations relating to a covered bond programme to another issuer (**issuer B**), issuer B is, from the time of the transfer, the issuer for the purposes of this subpart.
- (3) **Subsection (2)** does not affect the rights or obligations of issuer A before the transfer.

Compare: 1989 No 157 s 139C

Main duties of issuer

382 Issuer may issue covered bond only under registered programme

- (1) An issuer must not issue, or permit the issue of, a covered bond other than under a registered covered bond programme.
- (2) An issuer that contravenes **subsection (1)** commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Compare: 1989 No 157 s 139E(4)

Registration of covered bond programmes

383 Register of registered covered bond programmes

- (1) The Bank must keep a public register of registered covered bond programmes.
- (2) The Bank—
 - (a) must determine the form and content of the register and may amend that form and content as it considers necessary; and
 - (b) may, based on the property in, or that may be included in, the relevant cover pool, designate registered covered bond programmes to particular classes of registered covered bond programmes, as specified by the Bank.
- (3) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.

Compare: 1989 No 157 s 139D(1)–(3)

384 When programme must remain or be removed from register

- (1) A registered covered bond programme must remain on the register despite—
 - (a) any defects in the registration process; or
 - (b) any failure by an issuer to comply with **section 392**.
- (2) However, the Bank may remove a registered covered bond programme from the register—
 - (a) if—
 - (i) all obligations under that programme have been fulfilled; or
 - (ii) the security interest over the cover pool has been enforced; or
 - (iii) the issuer has requested the removal; and
 - (b) if, in all cases, the Bank has received evidence, acceptable to the Bank, that both the relevant bond trustee and security trustee consent to the removal.

Compare: 1989 No 157 s 139D(4), (5)

385 Other matters relating to registration

- (1) Registration occurs at the time and date that the Bank enters the details relating to the covered bond programme on the register.
- (2) A defect in the registration process of a covered bond programme does not affect a person's ability to enforce their rights in relation to the programme or any covered bond issued under the programme.
- (3) The failure of an issuer to register a covered bond programme or to comply with any requirement under **section 392** does not affect any other person's ability to enforce their rights in relation to the programme or any covered bond issued under the programme.

Compare: 1989 No 157 s 139D(6)

386 Requirement, and application, for registration of covered bond programme

- (1) Only an issuer may apply to the Bank to register a covered bond programme.
- (2) An application must be made in the manner specified by the Bank.

Compare: 1989 No 157 s 139E(1), (2)

387 Determination of application for registration of covered bond programme

- (1) The Bank must not register a covered bond programme unless it is satisfied that the requirements set out in **subsection (2)** are met.
- (2) The requirements are as follows:
 - (a) that the cover pool property is, or will be, owned by an identified covered bond SPV that—

- (i) is a company (within the meaning given in section 2(1) of the Companies Act 1993); or
 - (ii) is a person or partnership specified in the regulations; or
 - (iii) is a member of a class of persons or partnerships specified in the regulations; and
- (b) that a cover pool monitor has been appointed; and
- (c) that a register of cover pool property will be maintained; and
- (d) that the covered bond programme specifies, or refers to documents that specify, procedures and internal controls that ensure—
- (i) the up-to-date and accurate keeping of the register; and
 - (ii) that the property in the cover pool remains consistent with any class designation under **section 383(2)(b)**; and
- (e) that the covered bond programme specifies a test, or tests, to determine, in accordance with any procedures specified in the programme, whether the value of the cover pool property is at least equal to the principal amount outstanding on the covered bonds; and
- (f) that the covered bond programme provides for the covered bond SPV to perform, or arrange to have performed on its behalf, the requirements of **section 392(1)(a) and (b)(i)**—
- (i) in the event that any amounts become due and payable by the covered bond SPV under the covered bond programme; and
 - (ii) until the security interest over the cover pool property has been enforced; and
- (g) that the issuer is in compliance with all other requirements imposed in relation to covered bonds by, or under, all applicable standards.

Compare: 1989 No 157 s 139F

388 Bank must approve or decline application

- (1) Having considered an application made under **section 386(2)**, the Bank must either approve or decline the application.
- (2) If the Bank is satisfied that an issuer meets the requirements of **section 387(2)**, the Bank must approve the application and register the covered bond programme.
- (3) The Bank must otherwise decline the application.

Compare: 1989 No 157 s 139G(1)–(3)

389 Bank must give notice of approval

If the Bank approves the application, it must give notice of its decision to the issuer within 60 working days after receiving all of the information required by the Bank to determine the application.

Compare: 1989 No 157 s 139G(4)

390 Bank must give notice of proposal to decline application

If the Bank proposes to decline the application, the Bank must, within 60 working days after receiving all of the information required to determine the application,—

- (a) give the issuer notice of the proposed decision and the reasons for it; and
- (b) invite the issuer to provide, within 10 working days after the date of the notice, submissions or further information in response to the proposed decision; and
- (c) have regard to any submissions and further information it receives from the issuer; and
- (d) give notice of its final decision to the issuer within 5 working days after the time period specified in **paragraph (b)** (whether or not the Bank receives any submissions or further information).

Compare: 1989 No 157 s 139G(5)

391 Bank and issuer may agree to modify time limits

The Bank and the issuer may agree to modify the time limits specified in **sections 389 and 390**.

Compare: 1989 No 157 s 139G(6)

*Ongoing duties of issuer***392 Requirements relating to registered covered bond programmes**

- (1) Every issuer must, in relation to a registered covered bond programme,—
 - (a) ensure that the test or tests specified in **section 387(2)(e)** are carried out at intervals of not more than 12 months and notify the Bank if the result of the test or tests is that the value of the cover pool property is less than the principal amount outstanding on the covered bonds; and
 - (b) ensure that—
 - (i) a register of cover pool property is maintained; and
 - (ii) it complies with the procedures and internal controls referred to in **section 387(2)(d)**; and
 - (c) notify the Bank—
 - (i) of every covered bond issued; and

- (ii) of any material changes to the registered covered bond programme that would be likely to result in the registered covered bond programme failing to comply with the requirements of **section 387(2)**; and
- (iii) if the covered bond programme or the cover pool no longer complies with any class designation under **section 383(2)(b)**; and
- (d) provide the Bank with any further information it requests in relation to the covered bond programme; and
- (e) ensure that—
 - (i) the registered covered bond programme complies with the requirements of **section 387(2)**; and
 - (ii) the reports referred to in **section 396(b)** are provided to any bond trustee and security trustee appointed under the covered bond programme; and
 - (iii) the Bank is provided with a copy of every report prepared by the cover pool monitor in accordance with **section 396(c) and (d)**; and
 - (iv) if requested by the Bank, the Bank is provided with a copy of any other report prepared by the cover pool monitor in accordance with **section 396(b)**.
- (2) However, if any amounts become due and payable by the covered bond SPV under the covered bond programme,—
 - (a) the issuer is not required to comply with **subsection (1)**; and
 - (b) the covered bond SPV must provide the Bank with any information it requests in relation to the covered bond programme.

Compare: 1989 No 157 s 139H(1)–(2)

393 Bank may require corrective action

If an issuer fails to comply with any of the requirements of **section 392(1)**, the Bank may, by notice to the issuer, require the issuer to take the corrective action that the Bank may specify in the notice.

Compare: 1989 No 157 s 139H(3)

394 Offence to fail to take corrective action

- (1) An issuer commits an offence if the issuer, without lawful justification or excuse, fails to comply with a notice issued under **section 393**.
- (2) An issuer that commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

*Cover pool monitor***395 Cover pool monitor**

- (1) A **cover pool monitor** must—
- (a) be independent of the issuer; and
 - (b) be 1 or more of the following:
 - (i) a licensed auditor under the Auditor Regulation Act 2011;
 - (ii) a registered audit firm under the Auditor Regulation Act 2011, if the issuer ensures that appropriate arrangements are in place to ensure that the functions of the cover pool monitor are performed by, or under the supervision of, a licensed auditor;
 - (iii) a member of any other class of persons or firms that has been approved by the Bank; and
 - (c) be required, under its contract of appointment, to do the things specified in **section 396**.
- (2) For the purposes of this section, **independent** means independent of both the issuer and any associated person of the issuer.
- (3) However, a person's appointment as auditor does not affect their independence.

Compare: 1989 No 157 s 139I(1), (3), (4)

396 Cover pool monitor must perform certain services under contract

A cover pool monitor must be required to do the following under the contract of appointment:

- (a) assess, at a given point in time, and in accordance with any agreed procedures specified in the covered bond programme,—
 - (i) the arithmetical accuracy of the tests carried out in accordance with **section 392(1)(a)**; and
 - (ii) the issuer's compliance with the requirements of **section 392(1)(b)**; and
- (b) provide the issuer with reports on the matters required under **paragraph (a)** at intervals of not more than 12 months; and
- (c) provide reports at intervals of not more than 3 months if the cover pool monitor is not satisfied—
 - (i) as to the arithmetical accuracy of the tests carried out in accordance with **section 392(1)(a)**; or
 - (ii) that the issuer has complied with the requirements of **section 392(1)(b)**; and
- (d) if **paragraph (c)** applies, continue to provide 3-monthly reports until the cover pool monitor is satisfied that the issuer has remedied those matters; and

(e) report on all other matters required by the regulations (if any).

Compare: 1989 No 157 s 139I(1)(c)

Resolution or statutory management, etc, of issuer

397 Limitation on application of resolution, statutory management, etc, provisions to covered bond SPV

- (1) **Subsections (2) and (3)** apply in relation to the following provisions:
- (a) **sections 270(1), 273, 284, 308(1), and 312(1)** of this Act:
 - (b) section 248 of the Companies Act 1993:
 - (c) sections 42(1), 43(1), 44(1), and 45(2) of the Corporations (Investigation and Management) Act 1989.
- (2) Nothing in a provision referred to in **subsection (1)**—
- (a) prevents the transfer of the legal title to property in a cover pool from an issuer to a covered bond SPV:
 - (b) prevents the transfer, under a contract, of any documentation or data relating to property in a cover pool from the issuer to a covered bond SPV or a person acting on behalf of that SPV:
 - (c) prevents a covered bond SPV, or a person acting on behalf of that SPV, from exercising a power of attorney granted by the issuer in relation to property in a cover pool:
 - (d) affects the issuer's obligation to pay moneys collected on behalf of, and held on trust for, a covered bond SPV, to that SPV:
 - (e) prevents the enforcement of any of the above rights by, or on behalf of, a covered bond SPV.
- (3) However, **subsection (2)** applies only if—
- (a) the covered bond SPV is the owner of the property in the cover pool; and
 - (b) the covered bond programme is registered under **section 388**.
- (4) A covered bond SPV is not—
- (a) an associated person for the purposes of section 38(1)(a) of the Corporations (Investigation and Management) Act 1989 or section 170(1)(b) of the Insurance (Prudential Supervision) Act 2010; or
 - (b) a subsidiary for the purposes of section 38(2) of the Corporations (Investigation and Management) Act 1989 or section 170(2) of the Insurance (Prudential Supervision) Act 2010; or
 - (c) a related company for the purposes of section 271 of the Companies Act 1993.

Compare: 1989 No 157 s 139J

Subpart 11—Bank may apply to put deposit takers and associated persons into liquidation

398 Liquidation of licensed deposit takers and associated persons

- (1) This section applies to a person (A) if—
 - (a) A is a licensed deposit taker (whether or not it is in resolution); or
 - (b) A—
 - (i) is an associated person of a licensed deposit taker; and
 - (ii) is in resolution; and
 - (iii) is not itself a licensed deposit taker.
- (2) The Bank or a resolution manager may apply to the High Court under the Companies Act 1993 to put A into liquidation under that Act.
- (3) **Subsection (2)** applies whether A is a company, an association, or an overseas company within the meaning of the Companies Act 1993.
- (4) A resolution manager may apply only with the prior approval of the Bank.
- (5) An application under this section must be treated as if it were an application under section 241(2)(c) of the Companies Act 1993 (and, in the case of an overseas company, also an application under section 342 of that Act).
- (6) This section does not limit or affect any other legislation that provides for the winding up, liquidation, or dissolution of a body corporate or a class of body corporate.

Compare: 1989 No 157 s 136

399 When High Court may appoint liquidator

- (1) The High Court may, on an application under **section 398**, appoint a liquidator for A if it is satisfied that—
 - (a) A is unable to pay its debts (and, for that purpose, section 287 of the Companies Act 1993 applies with all necessary modifications whether or not A is a company); or
 - (b) A has persistently or seriously contravened any prudential obligation; or
 - (c) it is just and equitable that the deposit taker be put into liquidation.
- (2) In the case of an application under **section 398**, **subsection (1)** applies instead of section 241(4) of the Companies Act 1993.

Subpart 12—Miscellaneous

400 Licensed deposit taker not entitled to be informed about exercise of powers under this Part

None of the following have a right to be consulted or informed about the exercise, or possible exercise, of any powers conferred by this Part or to make rep-

representations to any person about the exercise, or possible exercise, of those powers:

- (a) a licensed deposit taker, an associated person, or a subsidiary;
- (b) a director or employee of a person referred to in **paragraph (a)**.

Compare: 1989 No 157 s 147

Part 8 Miscellaneous

Subpart 1—Use of words bank, banker, and banking

Limit on use of restricted words in name or title

401 Limit on use of restricted words in name or title

- (1) A financial service provider must not—
 - (a) be formed, incorporated, or registered using a name or title that includes a restricted word; or
 - (b) change its name or title to a name or title that includes a restricted word; or
 - (c) 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.
- (2) In **section 403, 404, and 405**, use, in relation to a restricted word, means act in a manner prohibited by this section.

Compare: 1989 No 157 s 64(1), (7)

402 Offence for contravening limit on use of restricted words

A financial service provider commits an offence if it contravenes **section 401** and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both);
- (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

Compare: 1989 No 157 s 64(5), (6)

403 When restriction does not apply

Section 401 does not apply to—

- (a) the Bank; or
- (b) a person who is authorised by the Bank under **section 404 or 405** to use a name or title that includes a restricted word (but only to the extent that the person is acting within the scope of the authorisation).

Compare: 1989 No 157 s 64(2)

404 Bank may authorise particular persons to use restricted words in name or title

The Bank may, by written notice given to any of the following persons, authorise that person to use a name or title that includes a restricted word:

- (a) a licensed deposit taker:
- (b) a person licensed or registered as a bank in a country other than New Zealand:
- (c) an associated person of a licensed deposit taker.

Compare: 1989 No 157 s 65(1), (2)(a), (4)(a)

405 Bank may authorise class of persons to use restricted words in name or title

- (1) The Bank may issue a notice that authorises a class of licensed deposit takers or overseas banks to use a name or title that includes a restricted word.
- (2) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3) In this section, **overseas bank** means a person licensed or registered as a bank in a country other than New Zealand.

Compare: 1989 No 157 s 65(1), (3)(a)

406 Authorisation extends to Registrar of Companies, etc

An authorisation under **section 404 or 405** applies to any other person (for example, the Registrar of Companies), but only to the extent that the acts of that person are necessary to allow the person to whom the authorisation is given to have the benefit of the authorisation.

Compare: 1989 No 157 s 65(7)

407 Bank's policies for giving authorisation

- (1) The Bank's statement of prudential policy under section 254 of the Reserve Bank of New Zealand Act 2021 must outline in general terms the Bank's policies about how the Bank acts, or proposes to act, when exercising a power under **section 404 or 405**.
- (2) The statement must set out the Bank's policies in relation to minimum requirements for a deposit taker to be authorised to use a name or title that includes a restricted word.

Example

A deposit taker that is authorised to use "bank" may be required to comply with higher financial strength requirements than those that would otherwise apply.

408 Conditions

The Bank may give an authorisation under **section 404 or 405** subject to any conditions that the Bank thinks fit.

Examples*Example 1*

The Bank gives an authorisation to company A on the condition that A use a particular name or title approved by the Bank.

Example 2

The Bank gives an authorisation to overseas bank B on the condition that B carries on in New Zealand only those activities specified by the Bank.

Compare: 1989 No 157 s 65(2)(b), (3)(b), (4)(b), (5)

409 Application of Companies Act 1993

Sections 403 to 408 do not affect or limit the following sections of the Companies Act 1993:

- (a) sections 20 to 24 (which relate to company names):
- (b) section 333 (which relates to the reservation of the name of an overseas company).

Compare: 1989 No 157 s 66A

*Limit on use of restricted words in advertisement***410 Limit on use of restricted words in advertisement**

- (1) A specified person must not use a restricted word in an advertisement unless the advertisement contains a statement that complies with **subsection (2)**.
- (2) The statement must—
 - (a) state that the specified person is not a licensed deposit taker; and
 - (b) be communicated in a manner that ensures, as far as is reasonably practicable, that the statement attracts the attention of the persons to whom the advertisement is directed.
- (3) In this subpart,—

advertisement —

 - (a) means any thing used to promote—
 - (i) the interests of a specified person; or
 - (ii) the services or products of that person; and
 - (b) includes a trade mark of a specified person; but
 - (c) does not include the name or title of a specified person

specified person means a person that—

 - (a) is a financial service provider; but

(b) is not a licensed deposit taker.

Compare: 1989 No 157 s 66B(1), (2), (5)

411 Offence for contravening advertising limit

A specified person that contravenes **section 410** commits an offence and is liable on conviction to,—

(a) in the case of an individual, a fine not exceeding \$50,000 (or both):

(b) in the case of a body corporate, a fine not exceeding \$500,000.

Compare: 1989 No 157 s 66B(3), (4)

Bank may require change of name, etc

412 Power to require change of name, etc

(1) If the Bank is satisfied on reasonable grounds that a person has contravened, or is contravening, **section 401 or 410**, the Bank may, by notice, require the person to do any of the following:

(a) change the person's name or title to a name or title that does not include a restricted word:

(b) cease using a restricted word in an advertisement:

(c) cease carrying on any activity using a name or title that includes a restricted word.

(2) A person must comply with the requirement within the period of time and in the manner specified in the notice.

Compare: 1989 No 157 s 66D(1)–(3)

413 Offence for contravening requirement to change name, etc

A person that contravenes a requirement under **section 412** commits an offence and is liable on conviction to,—

(a) in the case of an individual, a fine not exceeding \$50,000 (or both):

(b) in the case of a body corporate, a fine not exceeding \$500,000.

Compare: 1989 No 157 s 66D(4), (5)

Subpart 2—Trans-Tasman co-operation

414 Interpretation in this subpart

In this subpart,—

action that is likely to have a detrimental effect on financial system stability in Australia includes an action that prevents or interferes with any outsourcing arrangement

authorised deposit-taking institution has the same meaning as in section 5(1) of the Banking Act 1959 (Aust)

outsourcing arrangement means an arrangement for business, or functions relating to any business, of an authorised deposit-taking institution to be carried on by a person other than that authorised deposit-taking institution.

Compare: 1989 No 157 s 67A

415 Trans-Tasman co-operation

When performing or exercising functions, powers, or duties under this Act or other prudential legislation, the Bank must—

- (a) support Australian financial authorities in meeting their statutory responsibilities relating to prudential regulation and financial system stability in Australia; and
- (b) to the extent reasonably practicable, avoid any action that is likely to have a detrimental effect on financial system stability in Australia.

Compare: 1989 No 157 s 68A(1)

416 Bank's duty to consult

- (1) This section applies if the Bank has reasonable cause to believe that an action it proposes to take under this Act or any other prudential legislation is an action that is likely to have a detrimental effect on financial system stability in Australia.
- (2) The Bank must, to the extent it considers reasonably practicable in the circumstances having regard to urgency or any other similar constraint, consult and consider the advice of every Australian financial authority it considers to be relevant in the circumstances before taking the proposed action.

Compare: 1989 No 157 s 68A(2), (3)

417 Failure to comply with subpart does not affect validity of Bank's actions

The performance or exercise of a function, power, or duty is not invalid by reason only of a failure to comply with this subpart.

Compare: 1989 No 157 s 68A(4)

Subpart 3—Confidentiality

418 Disclosure of information by Bank

- (1) This section applies to the following:
 - (a) information given to the Bank under this Act;
 - (b) information derived from or based on information referred to in **paragraph (a)**;
 - (c) information relating to the exercise, or possible exercise, of the powers conferred by this Act.
- (2) The Bank may publish or disclose any information to which this section applies only if—

-
- (a) the information is available to the public under an Act (other than the Official Information Act 1982) or is otherwise publicly available information; or
 - (b) the information is in a statistical or summary form; or
 - (c) the disclosure is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Bank by this Act or any other legislation; or
 - (d) the disclosure is made under subpart 3 of Part 6 of the Reserve Bank of New Zealand Act 2021 (which relates to information sharing); or
 - (e) the publication or disclosure is to a person who the Bank is satisfied has a proper interest in receiving the information; or
 - (f) the publication or disclosure is with the consent of the person to whom the information relates or of the person to whom the information is confidential.
- (3) The Bank must not publish or disclose information under **subsection (2)(e)** unless satisfied that satisfactory provision exists to protect the confidentiality of the information (in particular, information that is personal information as defined in section 7(1) of the Privacy Act 2020).
- (4) A member, the Governor, any other office holder of the Bank, or any employee of the Bank, must not publish or disclose any information to which this section applies except for the purposes of, or in connection with, the performance or exercise of any function, power, or duty under this Act or any other legislation.

419 Relationship with other Acts

- (1) Nothing in any Act, other than this Act or the Official Information Act 1982, requires the Bank or any person to whom information has been published or disclosed under **section 418** to make that information available to any other person.
- (2) The Bank may make information to which this section applies available under the Official Information Act 1982 only if 1 or more grounds under **section 418(2)** apply.

420 Offence for unauthorised disclosure

A member, the Governor, any other office holder of the Bank, or any employee of the Bank who intentionally or recklessly discloses information in contravention of **section 418** commits an offence and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both).

421 Conditions relating to disclosure of information

- (1) The Bank may, by notice to a person to whom any information is published or disclosed under **section 418(2)(c), (e), or (f)**, impose any conditions in relation to the publication, disclosure, or use of the information by the person.
- (2) The Bank must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual.
- (3) Conditions imposed may include, without limitation, conditions relating to—
 - (a) maintaining the confidentiality of anything provided:
 - (b) the storing of, the use of, or access to anything provided:
 - (c) the copying, returning, or disposing of copies of documents provided.

422 Restrictions on further disclosure of information

- (1) If information is published or disclosed to a person under **section 418(2)(c)**, the person may publish, disclose, or use the information only—
 - (a) for the purposes of, or in connection with, functions, powers, or duties referred to in **section 418(2)(c)**; and
 - (b) in accordance with any conditions imposed by the Bank.
- (2) If information is published or disclosed to a person under **section 418(2)(e)**, the person may publish, disclose, or use the information only if the publication, disclosure, or use—
 - (a) is authorised by the Bank and is in accordance with any conditions imposed by the Bank; or
 - (b) is for the purposes of, or in connection with, the functions, powers, or duties of a person under any legislation.
- (3) If information is published or disclosed to a person under **section 418(2)(f)**, the person may publish, disclose, or use the information only in accordance with the conditions of the consent (if any).

423 Offence for unauthorised disclosure or use

- (1) A person who intentionally or recklessly publishes, discloses, or uses information in contravention of **section 422** commits an offence.
- (2) A person who commits an offence against this section is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$100,000 (or both):
 - (b) in the case of a body corporate, to a fine not exceeding \$2,500,000.

424 Subpart does not limit Privacy Act 2020

Nothing in this subpart limits the Privacy Act 2020.

Subpart 4—Bank’s power to specify how things are done

425 When subpart applies

- (1) This subpart applies if this Act provides for any thing to be done in the manner specified by the Bank (including where the manner is specified in a notice given by the Bank).

Examples

An application for a licence must be made in the manner specified by the Bank.

The Bank may require information to be given under **section 95** in a manner specified in a notice given or issued by the Bank.

- (2) In this subpart, a **relevant person** is a person who must or may do the thing.

426 Bank may require particular persons to comply with specified requirements

- (1) The Bank may give a notice to 1 or more named relevant persons.
 (2) The notice may specify 1 or more of matters referred to in **section 428**.

427 Bank may require class of persons to comply with requirements

- (1) The Bank may issue under this section a notice that applies to a class of relevant persons.
 (2) The notice may specify 1 or more of matters referred to in **section 428**.
 (3) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

428 Requirements that may be specified

A notice under **section 426 or 427** may specify 1 or more of the following:

- (a) by whom, when, where, and how the thing must be done;
 (b) the form that must be used in connection with doing the thing;
 (c) what information or other evidence or documents must be provided in connection with the thing;
 (d) requirements with which information, evidence, or documents that are provided in connection with the thing must comply.

429 Bank may also require further information

A relevant person must also provide to the Bank the information that is required by the Bank to assist the Bank in performing or exercising its functions, powers, or duties in relation to the thing (for example, to supply further information in support of an application on request).

430 Bank may refuse to act if requirements not complied with

The Bank may refuse to perform or exercise a function, power, or duty if—

- (a) a thing is not done in the manner specified by the Bank in a notice given or issued under this subpart; or
- (b) a person fails to comply with **section 429**.

Example

An applicant for a licence does not apply in the manner specified by the Bank in a notice issued under **section 427**.

The Bank may refuse to consider the application.

Subpart 5—Regulations

431 General regulations

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for all or any of the following purposes:
 - (a) providing for anything this Act says may or must be provided for by regulations:
 - (b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing—
 - (i) by whom, when, where, and how the thing must be done:
 - (ii) the form that must be used in connection with doing the thing:
 - (iii) what information or other evidence or documents must be provided in connection with the thing:
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply:
 - (c) authorising the Bank to determine or prescribe, by notice, any of the matters under **paragraph (b)**:
 - (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3) If regulations made under **subsection (1)(c)** authorise the Bank to determine or prescribe matters by notice,—
 - (a) a notice made under the regulations is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements); and
 - (b) the regulations must contain a statement to that effect.

432 Regulations relating to depositor compensation scheme

- (1) The Governor-General may, by Order in Council, on the advice of the Minister given after consulting the Bank, make regulations for all or any of the following purposes:
- (a) prescribing classes of persons that are not eligible investors under **Part 6**:
 - (b) prescribing requirements for the purposes of **section 186(1)(a)(iii)**:
 - (c) declaring classes of debt securities to not be protected deposits under **Part 6**:
 - (d) providing for matters relating to temporary high balance limits, including 1 or more of the following:
 - (i) prescribing limits or how limits must be determined:
 - (ii) providing for the circumstances or other matters relating to when a limit applies (for example, providing for how long an amount may be held in a protected deposit before the limit ceases to apply):
 - (iii) providing for a limit to apply in relation to an eligible investor only if the eligible investor or another person does 1 or more things in the manner prescribed by the regulations or in the manner specified by the Bank (for example, supplies information to the Bank):

Example

A couple sells their family home and deposit the proceeds of the sale into a bank account. Ordinarily, the limit for compensation under **Part 6** is \$100,000. However, as a result of the deposit, the amount of the protected deposit exceeds this limit.

The regulations may provide for the \$100,000 limit to be increased in these circumstances. However, the extra protection will cease to apply if the proceeds are held in the bank account for longer than a specified period of time.

- (e) providing for matters referred to in **sections 205 and 206**.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

433 Regulations prescribing classes of persons that are not eligible investors

The Minister must, before giving advice for regulations under **section 432(1)(a)**,—

- (a) have regard to the purpose of **Part 6** set out in **section 184**; and
- (b) be satisfied that the regulations are necessary or desirable in order to prevent entitlements to compensation under **Part 6** from being available to a class of persons where—

- (i) those persons have entered into arrangements with a purpose or an effect of circumventing, evading, or defeating the principle that the compensation should be limited to \$100,000 per eligible investor per deposit taker; or
- (ii) making the compensation available to those persons may reduce incentives for them to prudently assess risk when making investment decisions; or
- (iii) making the compensation available would otherwise present a risk to the stability of New Zealand's financial system.

434 Regulations prescribing requirements for protected deposits and declaring classes of debt securities not to be protected deposits

The Minister must, before giving advice for regulations under **section 432(1)(b) and (c)**,—

- (a) have regard to the purpose of **Part 6** set out in **section 184**; and
- (b) have regard to the economic substance of the securities to which the regulations relate; and
- (c) be satisfied that the regulations are necessary or desirable in order to ensure that compensation under that Part is available only in relation to debt securities that are commonly referred to in the financial markets as current account, savings account, or term deposit products.

435 Regulations providing for temporary high balance limits

The Minister must, before giving advice for regulations under **section 432(1)(d)**,—

- (a) be satisfied that the regulations are necessary or desirable to protect eligible investors in circumstances where the amount of a protected deposit is temporarily higher as a result of special events or circumstances of a personal, domestic, or household character (for example, the sale of a family home); and
- (b) have regard to—
 - (i) the advice given by the Bank under **section 436**; and
 - (ii) the purpose of **Part 6** set out in **section 184**; and
 - (iii) the size and composition of the protected deposits to which the regulations will relate; and
 - (iv) the likely effect that the regulations will have on the costs referred to in **section 226(2)**; and
 - (v) the principle that the regulations should be consistent with the Bank efficiently and effectively performing its functions under **Part 6** (in particular, providing compensation as soon as practic-

able after a specified event and ensuring that determining entitlements does not involve undue cost or delay).

436 Bank must give advice about regulations for temporary high balance limits

- (1) The Bank must, before regulations are made under **section 432(1)(d)**, give the Minister advice about the proposed regulations.
- (2) The Bank must, before giving the advice, consult licensed deposit takers or the persons or organisations that the Bank considers are able to represent the views of licensed deposit takers.

437 Regulations providing for calculation of amount of person's protected deposits or share of protected deposits

The Minister must, before giving advice for regulations under **section 432(1)(e)**,—

- (a) have regard to the purpose of **Part 6** set out in **section 184**; and
- (b) have regard to the economic substance of the arrangements referred to in **section 205(1)**, under which persons are entitled, or may receive, benefits in connection with protected deposits; and
- (c) have regard to the principles that—
 - (i) compensation under **Part 6** should be limited to \$100,000 per eligible investor per deposit taker; and
 - (ii) the regulations should be consistent with the Bank efficiently and effectively performing its functions under **Part 6** (in particular, providing compensation as soon as practicable after a specified event and ensuring that determining entitlements does not involve undue cost or delay).

Subpart 6—Exemptions

438 Bank may grant exemptions from credit rating requirements

- (1) The Bank may, on the terms and conditions (if any) that it thinks fit, exempt any person or class of persons from compliance with **section 56** (which relates to credit ratings).
- (2) The Bank's reasons for granting an exemption (including why it is appropriate) must be published together with the exemption.
- (3) An exemption granted under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

439 Restriction on Bank's exemption power

The Bank must not grant an exemption from compliance with a provision unless it is satisfied that—

- (a) the exemption is not inconsistent with the purposes of this Act; and
- (b) the costs of compliance with the provision would be unreasonable or not justified by the benefit of compliance; and
- (c) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Subpart 7—Other miscellaneous provisions

440 How notices, directions, and other documents must be given

- (1) This section and **section 441** apply (unless this Act provides otherwise) if a provision of this Act requires or authorises any notice, direction, or other document, or any notification, to be given or provided to a person.
- (2) The notice, direction, document, or notification must be in writing and must, in the case of a notice, direction, document, or notification being given or provided to—
 - (a) an individual, be given—
 - (i) by delivering it personally or by an agent (such as a courier) to the person; or
 - (ii) by sending it by post addressed to the person at the person’s usual or last known place of residence or business; or
 - (iii) by sending it by email to the person’s email address provided by the person for the purpose; or
 - (iv) in any other manner a District Court Judge directs:
 - (b) a company within the meaning of the Companies Act 1993, be served in a manner provided for in section 387(1) or 388 of that Act:
 - (c) an overseas company, be served in a manner provided for in section 389(1) or 390 of the Companies Act 1993:
 - (d) any other body corporate, be served in a manner in which it could be given or served if the body corporate were a company within the meaning of the Companies Act 1993.
- (3) If a person is absent from New Zealand, a notice, direction, document, or notification given to the person’s agent in New Zealand in accordance with **subsection (1)** must be treated as having been given or provided to the person.
- (4) If a person has died, the notice, direction, document, or notification may be given, in accordance with **subsection (1)**, to their personal representative.

441 When certain notices, directions, or documents treated as given

- (1) In the absence of proof to the contrary, a notice, direction, document, or notification sent to a person in accordance with **section 440(2)(a)(iii)** must be treated as having been given or provided to the person on the second working day after the day on which it is sent.

- (2) Section 392 of the Companies Act 1993 applies for the purposes of **section 440(2)(b) to (d)**.

442 Meaning of deposit takers

The provisions set out in **Schedule 2** have effect according to their terms.

Part 9 Repeals and amendments to other Acts

Repeals

443 Repeals

The following are repealed:

- (a) the Banking (Prudential Supervision) Act 1989;
- (b) the Non-bank Deposit Takers Act 2013.

Amendments to Reserve Bank of New Zealand Act 2021

444 Principal Act

Sections 445 to 448 amend the Reserve Bank of New Zealand Act 2021.

445 Section 10 amended (Bank's functions)

- (1) After section 10(1)(b)(iii), insert:
 - (iiia) issuing warnings, reports, or guidelines, or making comments in connection with compliance with that legislation; and
- (2) In section 10(1)(b)(iv), after “difficulties”, insert “(for example, acting in relation to a licensed deposit taker that is in resolution)”.
- (3) After section 10(1)(b), insert:
 - (ba) to manage and administer the depositor compensation scheme under the Deposit Takers Act **2022**, including doing the things set out in **section 189** of the Deposit Takers Act **2022**:

446 Section 74 (Ability to delegate)

After section 74(1)(f), insert:

- (fa) a person appointed as a resolution manager under **section 334** of the Deposit Takers Act **2022**:

447 New section 190A and cross-heading inserted

After section 190, insert:

Qualified privilege protection

190A Bank’s warnings, reports, guidelines, or comments protected by qualified privilege

For the purposes of clause 3 of Part 2 of Schedule 1 of the Defamation Act 1992, any warning, report, guideline, or comment issued or made by the Bank in the course of the performance or intended performance of its functions must be treated as an official report made by a person holding an inquiry under the authority of the Parliament of New Zealand.

Compare: 2011 No 5 s 23

448 Section 240 amended (Form and content of annual report)

After section 240(1)(n), insert:

- (na) the financial statements of the depositor compensation fund, and the statement of responsibility and audit report for those statements, required under **subpart 9 of Part 6** of the Deposit Takers Act **2022**; and

Amendments to Financial Markets Conduct Act 2013

449 Principal Act

- (1) **Sections 450 to 452** amend the Financial Markets Conduct Act 2013.
- (2) *See also* **Schedule 3** for further amendments to that Act.

450 Section 6 amended (Interpretation)

In section 6(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6(1)** of the Deposit Takers Act **2022**

451 Section 22 amended (False or misleading representations)

In section 22(h), after “the Consumer Guarantees Act 1993”, insert “or **Part 6** of the Deposit Takers Act **2022**”.

452 Schedule 1 amended

In Schedule 1, replace clause 21 and the cross-heading above that clause with:

Exclusion for licensed deposit takers

21 Offers of prescribed financial products or debt securities by licensed deposit takers

An offer of financial products does not require disclosure under Part 3 of this Act if the financial products are—

- (a) financial products of a kind prescribed for the purposes of this paragraph that are issued by a licensed deposit taker; or

- (b) debt securities issued by a licensed deposit taker; or
- (c) financial products of a kind prescribed for the purposes of this paragraph that are issued by a subsidiary of a licensed deposit taker; or
- (d) prescribed currency forwards that are issued by a licensed deposit taker or a subsidiary of a licensed deposit taker.

Insurance (Prudential Supervision) Act 2010

453 Principal Act

Section 454 amends the Insurance (Prudential Supervision) Act 2010.

454 Meaning of carrying on insurance business in New Zealand

- (1) After section 8(2)(a), insert:
 - (aa) the Bank or a subsidiary of the Bank; or
- (2) In section 8(2)(b), before “an entity”, insert “the Crown, or”.

Consequential amendments

455 Consequential amendments

- (1) Amend the Acts specified in **Part 1 of Schedule 3** as set out in that Part.
- (2) Amend the secondary legislation specified in **Part 2 of Schedule 3** as set out in that Part.

Schedule 1
Transitional, savings, and related provisions

s 8

Part 1
Provisions relating to this Act as enacted

1 First statement of funding approach

The Minister must take all reasonable steps to ensure that the first statement of funding approach is issued before the first anniversary of the commencement of **Part 6**.

2 First statement of approach to resolution

The Bank must take all reasonable steps to ensure that the first statement of approach to resolution is issued before the first anniversary of the commencement of **Part 7**.

3 Existing registered banks and non-bank deposit takers are deposit takers under this Act

- (1) This applies to a person that, immediately before the commencement of this clause,—
- (a) is a registered bank under the Banking (Prudential Supervision) Act 1989; or
 - (b) is a licensed NBDT under the Non-bank Deposit Takers Act 2013.
- (2) The person must be treated as being a deposit taker under this Act.

Schedule 2 Deposit takers

s 442

Contents

		Page
1	Interpretation	183
2	Meaning of deposit taker	184
3	Receiving money from conduit issuer of debt securities	185
4	Miscellaneous matters relating to territorial scope	185
5	Schedule may not apply if borrowing in New Zealand is below threshold prescribed in regulations	186
6	Bank may make declarations for purposes of this schedule	186
7	Procedural requirements for declaration	186
8	Bank's reasons	187

1 Interpretation

In this schedule,—

business includes any profession, trade, or undertaking, whether or not carried on with the intention of making a pecuniary profit

call debt security means a debt security under which—

- (a) the product holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 5 working days after the demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

credit has the same meaning as in section 6 of the Credit Contracts and Consumer Finance Act 2003

credit contract—

- (a) has the same meaning as in section 7 of the Credit Contracts and Consumer Finance Act 2003; but
- (b) does not include—
 - (i) a contract under which no interest charges, and no credit fees, as defined in section 5 of that Act, are payable; or
 - (ii) a contract of a class that is declared by the Bank not to be a credit contract for the purposes of this schedule (*see clause 6*)

DT regulated offer—

- (a) means a regulated offer within the meaning of section 41 of the FMCA; and
- (b) includes an offer of debt securities that would be a regulated offer within the meaning of that section if clause 21 of Schedule 1 of the FMCA were not in force

issuer has the same meaning as in section 6(1) of the FMCA

offer has the same meaning as in section 6(1) of the FMCA

product holder has the same meaning as in section 6(1) of the FMCA.

2 Meaning of deposit taker**(1) In this Act, deposit taker—**

- (a) means any of the following:
 - (i) a person that carries on the business of borrowing and lending money;
 - (ii) a person, or a member of a class of persons, that is declared by the Bank to be a deposit taker for the purposes of this Act (*see clause 6*); but
- (b) does not include any of the following:
 - (i) a local authority;
 - (ii) the Crown (as defined in the Public Finance Act 1989);
 - (iii) a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004);
 - (iv) the Bank or any subsidiary of the Bank;
 - (v) a person, or a member of a class of persons, that is declared by the Bank not to be a deposit taker for the purposes of this Act (*see clause 6*).

(2) A person carries on the business of borrowing and lending money if the person—*Borrowing*

- (a) does 1 or more of the following:
 - (i) makes a DT regulated offer of debt securities;
 - (ii) makes, in New Zealand, an offer of call debt securities;
 - (iii) makes, in New Zealand, an offer of any debt securities of a class that is declared by the Bank for the purposes of this clause;
 - (iv) receives money from a conduit issuer of debt securities; and

Lending

- (b) carries on a business of providing credit under credit contracts.

- (3) **Subclauses (1)(a)(i) and (2)** apply whether or not the business of borrowing and lending money is the person's only business or the person's principal business.

3 Receiving money from conduit issuer of debt securities

In this schedule, a person (A) receives money from a conduit issuer of debt securities if—

- (a) A is an associated person of another person (the **conduit issuer**); and
- (b) the conduit issuer raises an amount of money under an offer of a kind referred to in **clause 2(2)(a)(i), (ii), or (iii)**; and
- (c) that money is raised as part of an agreement under which 75% or more of that money is provided, directly or indirectly and whether by 1 transaction or a series of transactions, for the use of—
 - (i) A; or
 - (ii) A and 1 or more third persons that are associated persons of A; and
- (d) the money that is provided to A under **paragraph (c)** is 10% or more of the money that is raised under **paragraph (b)**; and
- (e) all or part of the money that is provided under **paragraph (c)** has not yet been repaid or returned to the conduit issuer; and
- (f) all other requirements prescribed in the regulations for the purposes of this clause (if any) are satisfied.

4 Miscellaneous matters relating to territorial scope

- (1) For the purposes of **clause 2(2)(a)(ii) and (iii)**, debt securities are offered in New Zealand if an offer of the debt securities is received by a person in New Zealand, unless the offeror demonstrates that it has taken all reasonable steps to ensure that persons in New Zealand may not accept the offer.
- (2) The following must be disregarded when considering whether debt securities are offered in New Zealand:
 - (a) where any resulting issue or transfer occurs:
 - (b) where the issuer or offeror is resident, incorporated, or carries on business.
- (3) **Clause 2(2)(b)** applies regardless of whether the business of providing credit under credit contracts is wholly or partly in a country outside New Zealand.

Example

An overseas company in the business of borrowing and lending makes a DT regulated offer of debt securities to investors in New Zealand. The extent of borrowing in New Zealand is above the threshold (if any) prescribed by the regulations (see **clause 5**).

The overseas company lends money only to overseas borrowers.

Despite lending only to overseas borrowers, the company is still a deposit taker under this Act (unless **clause 2(1)(b)** applies).

5 Schedule may not apply if borrowing in New Zealand is below threshold prescribed in regulations

For the purposes of this schedule, an offer referred to in **clause 2(2)(a)(i), (ii), or (iii)** must be disregarded if—

- (a) the extent to which debt securities are offered to persons in New Zealand is less than a threshold prescribed in the regulations (if any); and
- (b) all other requirements prescribed in the regulations for the purposes of this clause (if any) are satisfied.

6 Bank may make declarations for purposes of this schedule

- (1) The Bank may issue a notice that—
 - (a) declares that a person or a person of a particular class—
 - (i) is a deposit taker for the purposes of this Act; or
 - (ii) is not a deposit taker for the purposes of this Act;
 - (b) declares that a contract of a particular class is not a credit contract for the purposes of this schedule;
 - (c) declares that debt securities of a particular class are debt securities for the purposes of **clause 2**.
- (2) A notice issued under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons.
- (3) If the notice applies only to 1 or more named persons, the Bank must—
 - (a) give the notice to those persons; and
 - (b) publish the notice in the *Gazette* and on the Bank's Internet site.

7 Procedural requirements for declaration

- (1) The Bank may issue a notice under **clause 6** only if the Bank—
 - (a) is satisfied that the notice is necessary or desirable in order to promote the main purpose of this Act, or any of the additional purposes, specified in **section 3**; and
 - (b) in the case of **clause 6(1)(a)**, has had regard to the nature of the business activities carried on by the person or class of persons that are the subject of the declaration; and
 - (c) in the case of **clause 6(1)(b)**, has had regard to the economic substance of the contracts that are the subject of the declaration; and
 - (d) in the case of **clause 6(1)(c)**, has had regard to the economic substance of the debt securities that are the subject of the declaration; and

-
- (e) has consulted the persons or representatives of the persons that the Bank considers will be substantially affected by the notice.
- (2) A failure to comply with **subsection (1)(e)** does not affect the validity of the declaration.

8 Bank's reasons

The Bank's reasons for issuing a notice under **clause 6** (including why it is appropriate) must be published together with the notice.

Schedule 3

Consequential amendments

s 455

Part 1

Amendments to Acts

Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (2009 No 35)

In section 5(1), repeal the definitions of **non-bank deposit taker** and **registered bank**.

In section 5(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

Replace section 18(2)(n) with:

(n) a licensed deposit taker:

Replace section 48(b)(v) with:

(v) the Deposit Takers Act **2022**:

Replace section 130(1)(a) and (b) with:

- (a) for licensed deposit takers and life insurers, the Reserve Bank of New Zealand (**Reserve Bank**) is the relevant AML/CFT supervisor:
- (b) for persons referred to in subsection (1A) (other than licensed deposit takers and life insurers), the Financial Markets Authority is the relevant AML/CFT supervisor:

Replace section 137(2) and (3) with:

- (2) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under any prudential legislation for the purpose of exercising its powers or performing its functions and duties under this Act as an AML/CFT supervisor.
- (3) The Reserve Bank may use any information obtained or held by it in the exercise of its powers or the performance of its functions and duties under this Act as an AML/CFT supervisor for the purpose of exercising its powers or performing its functions and duties under any prudential legislation.
- (3A) In **subsections (2) and (3)**, **prudential legislation** has the same meaning as in section 5 of the Reserve Bank of New Zealand Act 2021.

After section 140(2)(d), insert:

(e) the Deposit Takers Act **2022**:

Repeal section 140(2)(p) and (t).

Biosecurity Act 1993 (1993 No 95)

Replace section 100O(3)(a)(i) with:

- (i) at a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**; and

Replace section 100ZE(3)(a)(i) with:

- (i) at a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**; and

In section 140A(1), replace “a registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**”.

Burial and Cremation Act 1964 (1964 No 75)

In section 2(1), repeal the definition of **registered bank**.

In section 2(1), insert in its appropriate alphabetical order:

bank means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”

In section 28(3), replace “registered bank” with “bank”.

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17)

In Schedule 1, replace clause 41(1) with:

- (1) The Council must establish, maintain, and operate 1 or more bank accounts at 1 or more licensed deposit takers (within the meaning of **section 6** of the Deposit Takers Act **2022**) that are authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”.

Child Support Act 1991 (1991 No 142)

Replace section 155(4)(a) with:

- (a) any licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022** that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”:

Community Trusts Act 1999 (1999 No 54)

Repeal section 20.

Companies Act 1993 (1993 No 105)

In section 236(2A), after “Reserve Bank of New Zealand under”, insert “**subpart 5 of Part 2** of the Deposit Takers Act **2022** or”.

Replace section 239ABMA(3) and (4) with:

Companies Act 1993 (1993 No 105)—continued

- (3) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in subsection (1) have in that subsection the same meanings as in that section.
- (4) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (1)(b), and those modifications include—
- (a) treating references to section 42(10)(b) of that Act as references to subsection (1)(b) of this section; and
 - (b) treating references to the enforcing counterparty as references to the secured creditor; and
 - (c) treating references to the grantor as references to the company that granted the security interest.

After section 241(2)(c)(vii), insert:

- (viiia) if the company is a licensed deposit taker or an associated person of a licensed deposit taker under the Deposit Takers Act **2022**, the Reserve Bank of New Zealand; or

Replace section 248(3) with:

- (3) This section is subject to **section 397(1) to (3)** of the Deposit Takers Act **2022**.

In section 256A(1), delete “registered”.

After section 256A(1), insert:

- (1A) In this section, **bank** means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”.

Replace section 271(3) with:

- (3) This section is subject to **section 397(4)** of the Deposit Takers Act **2022**.

In section 365(3), replace “registered bank (within the meaning of section 2 of the Banking (Prudential Supervision) Act 1989)” with “licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**”.

In Schedule 7, after clause 1(1)(a), insert:

- (aa) the costs, charges, and expenses referred to in **section 326** of the Deposit Takers Act **2022**; and

In Schedule 7, replace clause 2(3B) and (3C) with:

- (3B) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in subclause (3A) have in that subclause the same meanings as in that section.
- (3C) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subclause (3A)(b)

Companies Act 1993 (1993 No 105)—continued

(and those modifications include treating references to section 42(10)(b) of that Act as references to subclause (3A)(b) of this clause and treating references to the grantor as references to the company that granted the security interest).

Compensation for Live Organ Donors Act 2016 (2016 No 96)

In Schedule 2, clause 1(1) repeal the definition of **registered bank**.

In Schedule 2, clause 1(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In Schedule 2, clause 14(3), replace “registered bank” with “licensed deposit taker”.

Construction Contracts Act 2002 (2002 No 46)

Replace section 18FB(2)(b) with:

(b) a licensed deposit taker:

Replace section 18FB(8) with:

(8) In this section,—

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

licensed insurer has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010.

Corporations (Investigation and Management) Act 1989 (1989 No 11)

Replace section 8 with:

8 Consultation with Reserve Bank

- (1) The Registrar must consult the Reserve Bank of New Zealand before—
 - (a) giving a written notice requiring any licensed insurer or licensed deposit taker to supply any information under section 9;
 - (b) appointing any person to carry out an investigation of the affairs of any licensed insurer or licensed deposit taker under section 19;
 - (c) giving a written notice to any licensed insurer or licensed deposit taker that it is considered to be a corporation at risk.
- (2) The FMA must consult with the Reserve Bank of New Zealand before making a recommendation to the Minister under section 38 in respect of any licensed insurer, licensed deposit taker, or covered bond SPV.
- (3) In this section,—

covered bond SPV has the same meaning as in **section 380** of the Deposit Takers Act **2022**

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

licensed insurer means a licensed insurer within the meaning of the Insurance (Prudential Supervision) Act 2010.

Replace section 38(5) with:

- (5) Subsections (1)(a) and (2) are subject to **section 397(4)** of the Deposit Takers Act **2022**.

Replace section 42(8A) with:

- (8A) Subsection (1) is subject to **section 397(1) to (3)** of the Deposit Takers Act **2022**.

Replace section 42(11) and (12) with:

- (11) *See sections 62A and 62B* for definitions and other matters relating to subsection (10).

Replace section 43(4) with:

- (4) Subsection (1) is subject to **section 397(1) to (3)** of the Deposit Takers Act **2022**.

Replace section 44(5) with:

- (5) Subsection (1) is subject to **section 397(1) to (3)** of the Deposit Takers Act **2022**.

Replace section 45(3) with:

- (5) Subsection (2) is subject to **section 397(1) to (3)** of the Deposit Takers Act **2022**.

Replace section 51(9) and (10) with:

- (9) *See sections 62A and 62B* for definitions and other matters relating to subsection (8).

After section 62, insert:

62A Definitions of terms relating to qualifying derivatives

- (1) For the purposes of sections 42, 51, and **62B**,—
- collateral** means any 1 or more of the following:
- (a) a financial product:
 - (b) gold, silver, or platinum:
 - (c) a document of title, a chattel paper, an investment security, money, a negotiable instrument, or an intangible (with terms and expressions used in this paragraph having the same meanings as in section 16(1) of the Personal Property Securities Act 1999):

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

- (d) if a person (an **intermediary**) maintains an account to which interests in property, or rights to payment or delivery of property, of a kind specified in any of **paragraphs (a) to (c)** may be credited or debited, the rights of a person in whose name the intermediary maintains the account, to the extent that those rights relate to the interests in that property or the rights to payment or delivery of that property;
- (e) the proceeds of property of a kind specified in any of **paragraphs (a) to (d)**

default time means the close of the day after the date on which the statutory management commenced

derivative means a derivative within the meaning of section 8(4) of the Financial Markets Conduct Act 2013 (but disregarding any declaration referred to in section 8(5)(b) of that Act)

grantor means the corporation that granted the security interest

intermediated collateral means collateral of the kind referred to in **paragraph (d)** of the definition of collateral in this subsection

overseas person means—

- (a) a natural person who is not ordinarily resident in New Zealand; or
- (b) an entity (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that is incorporated or established outside New Zealand

possession includes possession within the meaning of section 18 of the Personal Property Securities Act 1999 (subject to **section 62B** and the regulations)

proceeds has the same meaning as in section 16(1) of the Personal Property Securities Act 1999 but applied with all necessary modifications, including treating references to collateral in the definition in that section as references to property of a kind specified in any of **paragraphs (a) to (d)** of the definition of collateral in this subsection

qualifying counterparty means—

- (a) a licensed deposit taker; or
- (b) the Accident Compensation Corporation (as continued by section 259 of the Accident Compensation Act 2001); or
- (c) the Guardians of New Zealand Superannuation established under section 48 of the New Zealand Superannuation and Retirement Income Act 2001; or
- (d) a specified operator within the meaning of section 5 of the Financial Market Infrastructures Act 2021; or
- (e) any prescribed entity; or

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

(f) any other entity of a prescribed class

qualifying derivative, in relation to enforcing a security interest over collateral, means a derivative to which both of the following apply:

- (a) the derivative is subject to—
- (i) a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 255 to 263 of the Insolvency Act 2006 apply; or
 - (ii) netting under the rules of a designated FMI to which subpart 5 of Part 3 of the Financial Market Infrastructures Act 2021 applies; and
- (b) the enforcing counterparty's interest in the collateral is evidenced in writing

security interest has the same meaning as in section 17 of the Personal Property Securities Act 1999.

(2) For the purposes of the definition of overseas person, a natural person is **ordinarily resident in New Zealand** if that person—

- (a) is domiciled in New Zealand; or
- (b) is living in New Zealand and the place where that person usually lives, and has been living for the immediately preceding 12 months, is in New Zealand, whether or not that person has on occasions been away from New Zealand during that 12-month period.

Compare: 1989 No 157 s 122A

62B Matters relating to possession or control of collateral

(1) For the purposes of section 42(10)(b) and 51(8)(b),—

- (a) collateral must be taken not to be in the possession or under the control of the enforcing counterparty if,—
 - (i) under the security interest, the grantor is free to deal with the collateral in the ordinary course of business until the enforcing counterparty's interest in the collateral becomes fixed and enforceable; or
 - (ii) regulations made under **section 62C** so provide:
- (b) intermediated collateral must be taken to be in the possession of the enforcing counterparty if that counterparty is the person in whose name the intermediary maintains the account:
- (c) intermediated collateral must be taken to be under the control of the enforcing counterparty if **subsection (3)** applies:

Corporations (Investigation and Management) Act 1989 (1989 No 11)—*continued*

- (d) collateral must be taken to be in the possession or under the control of the enforcing counterparty if regulations made under **section 62C** so provide.
- (2) **Subsection (1)(a)(i)** applies even if the enforcing counterparty's interest in the collateral becomes fixed and enforceable before the enforcement of the security interest over that collateral.
- (3) For the purposes of **subsection (1)(c)**, this subsection applies if—
- (a) the intermediary is not the grantor (but may be the enforcing counterparty or any other person); and
 - (b) there is an agreement in force between the intermediary and 1 or more other persons, 1 of which is the enforcing counterparty or the grantor; and
 - (c) the agreement has 1 or more of the following effects:
 - (i) the person in whose name the intermediary maintains the account is not able to transfer or otherwise deal with the collateral:
 - (ii) the intermediary must not comply with instructions given by the grantor in relation to the collateral without seeking the consent of the enforcing counterparty (or a person who has agreed to act on the instructions of the enforcing counterparty):
 - (iii) the intermediary must comply, or must comply in 1 or more specified circumstances, with instructions (including instructions to debit the account) given by the enforcing counterparty in relation to the collateral without seeking the consent of the grantor (or any person who has agreed to act on the instructions of the grantor).
- (4) **Subsections (1)(a)(i), (b), and (c), (2), and (3)** and the definition of possession in **section 62A** are subject to regulations made under **section 62C**.
- (5) The fact that a grantor retains a right of 1 or more of the following kinds does not by itself stop section 42(10)(b) or 51(8)(b) from being satisfied:
- (a) a right to receive and withdraw income in relation to the collateral:
 - (b) a right to receive notices in relation to the collateral:
 - (c) a right to vote in relation to the collateral:
 - (d) a right to substitute other collateral that the parties agree is of equivalent value for the collateral:
 - (e) a right to withdraw excess collateral:
 - (f) a right to determine the value of collateral.

Compare: 1989 No 157 s 122B

Corporations (Investigation and Management) Act 1989 (1989 No 11)—continued**62C Regulations relating to qualifying derivatives**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) prescribing entities and classes of entities for the purposes of the definition of qualifying counterparty in **section 62A**;
 - (b) providing for when collateral must or must not be taken to be in the possession or under the control of a person for the purposes of **section 62B** or any legislation that applies **section 62B** (and those matters may be specified with reference to different kinds of collateral or any other circumstances);
 - (c) providing that **section 62B(1)(a)(i), (b), or (c)** does not apply to specified kinds of collateral or in any other specified circumstances.
- (2) Regulations under this section must be made on the recommendation of—
 - (a) the Minister of Finance; and
 - (b) the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Companies Act 1993.
- (3) The Ministers may make a recommendation under **subsection (2)** only if the Ministers have—
 - (a) had regard to the matters set out in **subsection (4)**; and
 - (b) consulted the persons (or representatives of the persons) that the Ministers consider will be substantially affected by the regulations, and those persons have had the opportunity to comment to the Ministers.
- (4) The Ministers must have regard to the following under **subsection (3)(a)**:
 - (a) the purposes of this Act, the Companies Act 1993, the Personal Property Securities Act 1999, the Property Law Act 2007, and the Receiverships Act 1993;
 - (b) the effect of the regulations on—
 - (i) the maintenance of a sound and efficient financial system; and
 - (ii) the creditors of qualifying counterparties; and
 - (iii) the integrity of statutory management, corporate insolvency, and personal property securities law.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 173(1)(fb) to (fd), (2)–(4)

Crown Entities Act 2004 (2004 No 115)

In section 136(1), insert in its appropriate alphabetical order:

Crown Entities Act 2004 (2004 No 115)—*continued*

licensed deposit taker means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”

In section 136(1), repeal the definition of **registered bank**.

In section 158(1)(a) and (b) and (6), replace “registered bank” with “licensed deposit taker”.

In section 161(1)(a), replace “registered bank” with “licensed deposit taker”.

Customs and Excise Act 2018 (2018 No 4)

Replace section 415(1)(a) with:

(a) keep a bank account at a licensed deposit taker; and

In section 415(7), insert in its appropriate alphabetical order:

licensed deposit taker means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”

In section 415(7), repeal the definition of **registered bank**.

Education and Training Act 2020 (2020 No 38)

In section 10(1), insert in its appropriate alphabetical order:

bank means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”

In section 154(2)(a)(i), replace “registered bank” with “bank”.

In section 297(1), replace “registered bank” with “bank”.

In Schedule 12, clause 8(1), replace “registered bank” with “bank”.

Electoral Act 1993 (1993 No 87)

In section 212, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In section 212, definition of **loan**, paragraph (b), replace “registered bank” with “licensed deposit taker”.

In section 212, repeal the definition of **registered bank**.

Evidence Act 2006 (2006 No 69)

Replace section 75(3)(a) with:

(a) a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022** that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”:

Financial Market Infrastructures Act 2021 (2021 No 13)

In section 5, definition of **insolvency manager**, repeal paragraph (c)(ii).

In section 5, definition of **insolvency manager**, after paragraph (c), insert:

- (ca) the Bank, when it is performing or exercising functions under **subparts 4 to 8 of Part 7** of the Deposit Takers Act **2022**:

Replace section 59(1)(a) with:

- (a) **section 278(3) and 310** of the Deposit Takers Act **2022**:

Financial Markets Conduct Act 2013 (2013 No 69)

In section 6(1), repeal of definitions of **NBDT** and **registered bank**.

In section 6(1), definition of **issuer obligation**, replace paragraph (f) with:

- (f) the Deposit Takers Act **2022**

In section 60(3), replace the definition of **approved rating agency** with:

approved rating agency means a rating agency nominated or approved under **section 58** of the Deposit Takers Act **2022** or section 62 of the Insurance (Prudential Supervision) Act 2010

In the heading above section 174(c) replace “*registered bank*” with “*licensed deposit taker*”.

Replace section 372(3)(e) with:

- (e) a licensed deposit taker:

In section 426(1), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act **2022**”.

In the heading above section 441(c), replace “*registered bank*” with “*licensed deposit taker*”.

Replace section 451(1)(g) with:

- (g) a licensed deposit taker:

Repeal section 451(1)(i) and (j).

Replace section 461K(1)(d) with:

- (d) licensed deposit takers:

Repeal section 461K(1)(f) and (g).

Replace section 561A(2) with:

- (2) In deciding whether to grant, amend, or revoke an exemption under this subpart in relation to any provision of Part 7, the FMA must consult the Reserve Bank if the exemption concerns—
- (a) a licensed deposit taker; or
- (b) a licensed insurer.

In Schedule 1, replace clause 37(1)(b) and (c) with:

Financial Markets Conduct Act 2013 (2013 No 69)—*continued*

(b) a licensed deposit taker; or

Financial Markets Supervisors Act 2011 (2011 No 10)

In section 4(1), repeal the definition of **deposit taker**.

In section 4(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In section 4(1), definition of **issuer obligation**, replace paragraph (g) with:

(g) the Deposit Takers Act **2022**

In section 4(1), definition of **licensee obligation**, replace paragraph (g) with:

(g) the Deposit Takers Act **2022**:

In section 14(4)(b), replace “deposit taker” with “licensed deposit taker”.

In section 18(1)(a), replace “deposit taker” with “licensed deposit taker”.

Financial Service Providers (Registration and Dispute Resolution) Act 2008 (2008 No 97)

In section 4, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

Replace section 5(1)(b) and (c) with:

(b) being a licensed deposit taker:

Replace section 67(1)(c) with:

(c) if A has reasonable grounds to believe that a member that is a licensed deposit taker or a licensed insurer has contravened or is likely to contravene the Deposit Takers Act **2022** or the Insurance (Prudential Supervision) Act 2010 in a material respect, communicate that fact to the Reserve Bank; and

In Schedule 2, replace the item relating to registered banks with:

Reserve Bank of New Zealand	Licensed deposit takers	Deposit Takers Act 2022
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In Schedule 2, repeal the item relating to licensed NBDTs.

Fisheries Act 1996 (1996 No 88)

In section 2(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

Replace section 59(11)(c) with:

Fisheries Act 1996 (1996 No 88)—*continued*

- (c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by the person; and

Replace section 78(12)(c) with:

- (c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

Replace section 79(6)(c) with:

- (c) no licensed deposit taker is to be regarded as being included with any other person merely because the deposit taker has, in the ordinary course of its business as a financier, been granted any interest in quota owned by that person.

Replace section 255(6) and (7) with:

- (6) No quota owned by any licensed deposit taker is to be regarded as associated quota merely because the deposit taker has in the ordinary course of its business as a financier become the owner of that quota.

Friendly Societies and Credit Unions Act 1982 (1982 No 118)

Replace section 107F(2)(c) with:

- (c) the Reserve Bank of New Zealand, but only if the credit union is a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**.

Gambling Act 2003 (2003 No 51)

In section 4(1), definition of **approved surety**, replace paragraph (b) with:

- (b) includes a licensed deposit taker

In section 4(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In section 4(1), repeal the definition of **registered bank**.

In section 104(1), replace “registered bank” with “licensed deposit taker”.

In section 105(1), replace “registered bank” with “licensed deposit taker”.

In section 211(2), replace “registered bank” with “licensed deposit taker”.

Income Tax Act 2007 (2007 No 97)

[To come]

Infrastructure Funding and Financing Act 2020 (2020 No 47)

In section 106, repeal the definition of **registered bank**.

In section 106, insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In section 107(a), replace “registered bank” with “licensed deposit taker”.

Insolvency Act 2006 (2006 No 55)

Replace section 202(3) with:

- (3) Nothing in this section applies to any payments received in good faith in the ordinary course of business and without negligence by any licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**.

Insolvency (Cross-border) Act 2006 (2006 No 57)

In Schedule 1, replace paragraph (2) of article 1 with:

- (2) This Schedule does not apply to a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022** that is in resolution under that Act.

In Schedule 1, replace paragraph (4)(a) of article 22 with:

- (a) an application for recognition has been made in respect of a debtor that is a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022**;

In Schedule 1, article 22(4)(c), replace “is placed in statutory management” with “enters resolution under that Act”.

Insurance Intermediaries Act 1994 (1994 No 41)

Replace section 17(1)(e) with:

- (e) that is a licensed deposit taker or an associated person of a licensed deposit taker that is in resolution under the Deposit Takers Act **2022**.

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 6(1), insert in its appropriate alphabetical order:

licensed deposit taker has the same meaning as in **section 6** of the Deposit Takers Act **2022**

In section 6(1), replace the definitions of **voting right** and **voting security** with:

voting right has the same meaning as in **section 6** of the Deposit Takers Act **2022**

voting security means a security (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) that confers a voting right.

Replace section 99(6)(a)(i) with:

- (i) a licensed deposit taker; or

Insurance (Prudential Supervision) Act 2010 (2010 No 111)—*continued*

Replace section 100(2)(b) with:

- (b) does not include an investment of assets of a statutory fund by way of deposit with a licensed deposit taker, even though the deposit taker is a related party of the life insurer concerned.

Replace section 170(4) with:

- (4) Subsections (1)(b) and (2) are subject to **section 397(4)** of the Deposit Takers Act **2022**.

KiwiSaver Act 2006 (2006 No 40)

Replace section 221(4) with:

- (4) In this section, **bank account** means an account with a licensed deposit taker that is authorised under **section 404 or 405** of the Deposit Takers Act **2022** to use a name or title that includes the word “bank”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

In section 6, replace the definition of **bank** with:

bank means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”

In section 322(3)(b)(ii), replace “a financial institution within the meaning of the Banking (Prudential Supervision) Act 1989” with “a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**)”.

Legislation Act 2019 (2019 No 58)

In Schedule 4, repeal the item relating to the Banking (Prudential Supervision) Act 1989.

In Schedule 4, insert in its appropriate alphabetical order:

Deposit Takers Act **2022**

s 289

Limitation Act 2010 (2010 No 110)

Replace section 16(1)(j) with:

- (j) a claim under section 54 of the Corporations (Investigation and Management) Act 1989—the date on which the corporation was declared to be subject to statutory management:
- (k) a claim under **section 313** of the Deposit Takers Act **2022**—the date on which the licensed deposit taker entered resolution under that Act.

Replace section 16(2) with:

- (2) When section 301 of the Companies Act 1993 applies, in accordance with—

Limitation Act 2010 (2010 No 110)—*continued*

- (a) section 55 of the Corporations (Investigation and Management) Act 1989, to a corporation subject to statutory management, the date in subsection (1)(i) must be read as the date on which the corporation was declared to be subject to statutory management:
- (b) **section 316** of the Deposit Takers Act **2022**, to a licensed deposit taker in resolution, the date in subsection (1)(i) must be read as the date on which the deposit taker entered resolution.

Replace section 38(1)(e) with:

- (e) a claim under section 54 of the Corporations (Investigation and Management) Act 1989—the date on which the corporation was declared to be subject to statutory management:
- (f) a claim under **section 313** of the Deposit Takers Act **2022**—the date on which the licensed deposit taker entered resolution under that Act.

Replace section 38(2) with:

- (2) When section 301 of the Companies Act 1993 applies, in accordance with—
 - (a) section 55 of the Corporations (Investigation and Management) Act 1989, to a corporation subject to statutory management, the date in subsection (1)(d) must be read as the date on which the corporation was declared to be subject to statutory management:
 - (b) **section 316** of the Deposit Takers Act **2022**, to a licensed deposit taker in resolution, the date in subsection (1)(d) must be read as the date on which the deposit taker entered resolution.

Local Government Borrowing Act 2011 (2011 No 77)

Replace section 7 and the cross-heading above that section with:

Application of Deposit Takers Act 2022

7 Funding Agency not a licensed deposit taker

The Funding Agency is not a licensed deposit taker for the purposes of the Deposit Takers Act **2022**.

Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 (2003 No 21)

In Schedule 2, replace clause 31(1)(a) with:

- (a) at any licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”; and

Masterton Trust Lands Act 2003 (2003 No 1 (L))

In Schedule 2, clause 10(1), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “bank”.

In Schedule 2, after clause 10(2), insert:

- (3) In this clause, **bank** means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of the Deposit Takers Act **2022** to use a name or title that includes the word “bank”.

Overseas Investment Act 2005 (2005 No 82)

Replace section 111(1) with:

- (1) This section applies if a person who will be made subject to statutory management by an order under section 95 is any of the following:
 - (a) a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**):
 - (b) a covered bond SPV (within the meaning of **section 380** of the Deposit Takers Act **2022**):
 - (c) a licensed insurer (within the meaning of section 6 of the Insurance (Prudential Supervision) Act 2010):
 - (d) an operator of a designated FMI (within the meaning of section 5 of the Financial Market Infrastructures Act 2021).

Personal Property Securities Act 1999 (1999 No 126)

Replace section 103B(2) and (3) with:

- (2) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in this section (including the definitions of collateral and possession) have in this section the same meanings as in **section 62A**.
- (3) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of this section (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (1)(b) of this section and treating references to the grantor as references to the debtor that granted the security interest).

Pork Industry Board Act 1997 (1997 No 106)

In section 41(1), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “licensed deposit taker”.

After section 41(1), insert:

- (1A) In **subsection (1)**, **licensed deposit taker** means a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022** that is

Pork Industry Board Act 1997 (1997 No 106)—continued

authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”.

Primary Products Marketing Act 1953 (1953 No 10)

In section 3(7)(a), replace “registered bank within the meaning of the Banking (Prudential Supervision) Act 1989” with “licensed deposit taker”.

After section 3(7), insert:

(7A) In subsection (7), **licensed deposit taker** means a licensed deposit taker within the meaning of **section 6** of the Deposit Takers Act **2022** that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”.

Prisoners’ and Victims’ Claims Act 2005 (2005 No 74)

Replace section 54(2) with:

(2) The bank must be a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank”.

Property Law Act 2007 (2007 No 91)

Replace section 153(8) and (9) with:

- (8) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in subsection (7) have in that subsection the same meanings as in that section.
- (9) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (7)(b) (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (7)(b) of this section and treating references to the grantor as references to the person who granted the security interest).

Public Audit Act 2001 (2001 No 10)

Replace section 16(3) with:

(3) Subsection (1)(a) does not apply to any licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**).

Replace section 18(2) with:

(2) Subsection (1) does not apply to any licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**).

Public Finance Act 1989 (1989 No 44)

In section 2(1), replace the definition of **bank** with:

Public Finance Act 1989 (1989 No 44)—continued

bank, in relation to a bank operating within New Zealand, means—

- (a) the Reserve Bank of New Zealand; or
- (b) a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**) that is authorised under **section 404 or 405** of that Act to use a name or title that includes the word “Bank”

Receiverships Act 1993 (1993 No 122)

Replace section 30(7) and (8) with:

- (7) Terms and expressions defined in **section 62A** of the Corporations (Investigation and Management) Act 1989 and used in subsection (6) have in that subsection the same meanings as in that section.
- (8) **Section 62B** of the Corporations (Investigation and Management) Act 1989 applies with all necessary modifications for the purposes of subsection (6)(b) (and those modifications include treating references to section 42(10)(b) of that Act as references to subsection (6)(b) of this section and treating references to the grantor as references to the company that granted the security interest).

Registered Architects Act 2005 (2005 No 38)

In the Schedule, clause 41(1), replace “registered banks (within the meaning of the Banking (Prudential Supervision) Act 1989)” with “licensed deposit takers (within the meaning of **section 6** of the Deposit Takers Act **2022**) that are authorised under **section 404 or 405** of that Act to use a name or title that includes the word “bank””.

Reserve Bank of New Zealand Act 2021 (2021 No 31)

Replace section 4(3)(b) with:

- (b) the Bank’s functions, including acting as New Zealand’s central bank, acting as a prudential regulator and supervisor of banks, other deposit takers, insurers, and other financial institutions, and monitoring the financial system; and

In section 5(1), repeal the definitions of **licensed NBDT** and **registered bank**.

In section 5(1), definition of **prudential legislation**, replace paragraph (a) with:

- (a) the Deposit Takers Act **2022**;

In section 5(1), definition of **regulated entity**, replace paragraph (a) with:

- (a) a licensed deposit taker;

In section 5(1), definition of **regulated entity**, repeal paragraph (c).

Replace section 10(1)(e)(iii) with:

- (iii) Australian financial authorities within the meaning of **section 6** of the Deposit Takers Act **2022**; and

Reserve Bank of New Zealand Act 2021 (2021 No 31)—*continued*

In section 10(4), replace “section 105 of the Banking (Prudential Supervision) Act 1989” with “**section 418** of the Deposit Takers Act **2022**”.

Replace section 22(1)(g) with:

- (g) under the prudential legislation (for example, giving consent for the Bank to exercise certain powers, giving directions to the Bank, and giving advice to the Governor-General about putting an entity into statutory management or resolution):

In section 49(2), definition of **standards**, after paragraph (c), insert:

- (d) standards issued under **subpart 2 of Part 3** of the Deposit Takers Act **2022**.

Replace section 171(3)(a) with:

- (a) **subpart 7 of Part 7** of the Deposit Takers Act **2022**; or

Repeal section 175(2).

Repeal section 176(5)(a).

Replace section 282(2)(c) with:

- (c) Australian financial authorities prescribed within the meaning of **section 6** of the Deposit Takers Act **2022**:

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, repeal the items relating to the Banking (Prudential Supervision) Act 1989 and the Non-bank Deposit Takers Act 2013.

In the Schedule, insert in its appropriate alphabetical order:

Deposit Takers Act 2022	cl 127	Investigator may enter and search any place by consent or with warrant for purposes of investigating affairs of licensed deposit taker or associated person	All (except sections 118 and 119)
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Social Security Act 2018 (2018 No 32)

Replace section 111(2) with:

- (2) **Bank account**, in this section, means an account with a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**).

State-Owned Enterprises Act 1986 (1986 No 124)

In section 30(1), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act **2022**”.

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, after paragraph (ea), insert:

Summary Proceedings Act 1957 (1957 No 87)—*continued*

(eb) **section 162** of the Deposit Takers Act **2022**; or

Tax Administration Act 1994 (1994 No 166)

In section 3(1), definition of **bank account**, paragraph (a), replace “registered bank, or with a licensed NBDT as defined in section 4 of the Non-bank Deposit Takers Act 2013” with “licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**)”.

In section 25MB(2) and (7)(b), replace “Banking (Prudential Supervision) Act 1989” with “Deposit Takers Act **2022**”.

Replace section 80KL(2) with:

(2) The account must be held with a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**).

Wages Protection Act 1983 (1983 No 143)

In section 2, replace the definition of **financial institution** with:

financial institution—

- (a) means a licensed deposit taker (within the meaning of **section 6** of the Deposit Takers Act **2022**); and
- (b) includes the Reserve Bank of New Zealand

Westpac New Zealand Act 2011 (2011 No 1 (P))

In section 4(1), replace the definition of **Minister** with:

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of the Deposit Takers Act **2022**

Part 2**Amendments to secondary legislation**

[To come]