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By email

The Reserve Bank of New Zealand

For: David Hargreaves

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SUBMISSIONS ON DEPOSIT TAKERS BILL

Thank you for the opportunity to submit on the Deposit Takers Bill.

In general we support the bill and the way it has been structured.

Set out in the schedule are our submissions on specific clauses.

Yours faithfully

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Schedule

Deposit Takers Bill – submissions

<p>clause 7(1)</p>	<p>Clauses 7(1)(b) and (c) refer to "voting securities", which is not a defined term – "voting rights" is.</p> <p>Separately, "associated person" is used throughout the Bill, in particular that such a person may be caught up in a resolution or other insolvency regimes of a deposit taker. The Bill helpfully carries over the covered bond provisions from the existing Reserve Bank of New Zealand Act 1989, which clearly excludes a covered bond SPV from being an associated person. However, prior to the COVID-19 pandemic the Reserve Bank was discussing the introduction of RMO standards, albeit the Reserve Bank has currently advised this is on hold. If the Reserve Bank does intend to introduce a RMO standard, it would be helpful if statutory certainty on the status of the RMO SPV in the insolvency of the related deposit taker (eg not a subsidiary or an associated person) could also be included, consistent with the provisions that apply to covered bond SPVs.</p>
<p>clause 40</p>	<p>Amalgamations intra-group are not uncommon with banks, and so it would be helpful if the prohibition excluded an amalgamation with a wholly-owned subsidiary where the deposit taker continues as the amalgamated entity.</p>
<p>clause 63</p>	<p>There are limitations on the disclosure of credit ratings in some jurisdictions, eg Australia. It may be sensible to check that this requirement will be able to be complied with by deposit takers that act as branches in New Zealand.</p>
<p>clause 65(1)(a)</p>	<p>What is meant by "relevant investor"? It might be helpful to add a definition or to describe this person more clearly.</p>
<p>clause 74(4)(a)</p>	<p>It seems unlikely that a financial product would be convertible into equity securities of a subsidiary. Conversion into equity of a holding company may be more likely, as was the case when NZ banks were permitted to issue contingent capital instruments.</p> <p>See also the comment at clause 253(1)(k) in relation to conversion.</p>
<p>clause 155(2)(b)</p>	<p>The reference to "reasonable and proper steps" should be changed to "reasonable steps" to be consistent with the updated approach in sections 501 and 503 of the Financial Markets Conduct Act 2013.</p>
<p>clause 185(1)(b)(ii)</p>	<p>It will likely be challenging for deposit takers to gather this information, in particular as "large" is a dynamic test. As "large" is based on assets as at the end of a completed account period, it may be that the assessment needs to be done annually but this is not clear from the Bill.</p>

<p>clauses 208 and 215</p>	<p>This clause appears to be trying to make sure the amount of compensation is calculated before the application of mandatory set-off (s310 Companies Act).</p> <p>If so, we suggest that the reference to "liabilities (if any) that are owing from the eligible investor to the licensed deposit taker" should be replaced with "any amounts that are due from the eligible investor to the licensed deposit taker in respect of mutual credits, mutual debts or other mutual dealings that would be taken account of under section 310(1)(a) of the Companies Act 1993", in order to make this clear.</p> <p>It would also be helpful to clarify whether the depositor compensation scheme affects the operation of section 310 of the Companies Act, in particular as regards the Reserve Bank's right of subrogation under clause 215 and any amount in excess of the \$100,000 limit.</p>
<p>clause 251(2)(g)</p>	<p>"Regulatory action" needs to be defined for this clause. However, a definition of this term is included at clause 266(3). This can be addressed by adding a reference to "section 251" to clause 266(3).</p>
<p>clause 253(1)(a)</p>	<p>Is the reference to "difficulties" meant to refer to a broader range of issues than "financial difficulties" – as per clause 253(1)(h)?</p>
<p>clause 253(1)(j) and (k)</p>	<p>The Reserve Bank may give a direction to a deposit taker in a range of circumstances, which may not be related to the solvency of the deposit taker. We query whether the Reserve Bank should have the direction powers in paragraphs (j) and (k) before the deposit taker is put into resolution.</p>
<p>clause 265</p>	<p>A covered bond SPV should not be an "associated person" for the purposes of clauses 252 and 255(1)(b) also.</p> <p>As noted under clause 7(1), if the Reserve Bank wishes to implement the RMO standards in the future then a RMO SPV should also have the benefit of the same exclusions as for a covered bond SPV.</p>
<p>clause 279(4) and 281(a)(ii)</p>	<p>Should there be consistent use of "qualifying derivative" or "derivative"?</p>