



Reserve Bank
of New Zealand
Te Pūtea Matua

Enforcement Framework

Investigation Guidelines

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Introduction

The purpose of these Investigation Guidelines is to help you understand how the Reserve Bank of New Zealand - Te Pūtea Matua will investigate suspected breaches of the legislation for which we are responsible and what you can expect to happen during an investigation.

These **Investigation Guidelines** should be read in conjunction with our **Enforcement Principles and Criteria** and our **Enforcement Guidelines** (collectively, our **Enforcement Framework**).

Different investigative tools will be available for each of the areas for which we have regulatory responsibility: AML/CFT supervision; prudential supervision of registered banks, licensed insurers, non-bank deposit takers; and financial market infrastructure regulation and oversight. These Investigation Guidelines (along with the other parts of the Enforcement Framework) are therefore not exhaustive and are necessarily high level so that they can apply to all of the legislation for which we are responsible.¹

These Investigation Guidelines are not a statement of the law, are not intended as legal advice, and are not intended to have legal effect. If you are the subject of an investigation or receive a formal notice or other request for information in the course of an investigation, we recommend that you seek independent legal advice.

A glossary of defined terms can be found at page 13 of this document.

Enforcement Framework

Our Enforcement Framework sets out the considerations that apply when we select matters for investigation, conduct investigations, and ultimately make decisions relating to serious non-compliance. It ensures we are consistent, robust, and transparent in our decision-making processes. The Enforcement Framework consists of:

- **Enforcement Principles and Criteria** which describe the fundamental considerations (principles and criteria) for the Enforcement Framework that we will work through and weigh when deciding on the appropriate response. This piece of the Enforcement Framework guides the direction of our investigation and informs our approach to applying our enforcement discretion.
- **Enforcement Guidelines** which outline our regulatory response model for enforcement and add further detail on how we apply the Enforcement Principles and Criteria when selecting the appropriate response.
- **Investigation Guidelines** this document.

Our Enforcement Framework should be read alongside our Statement of Prudential Policy, Financial Policy Remit, and Relationship Charter.²

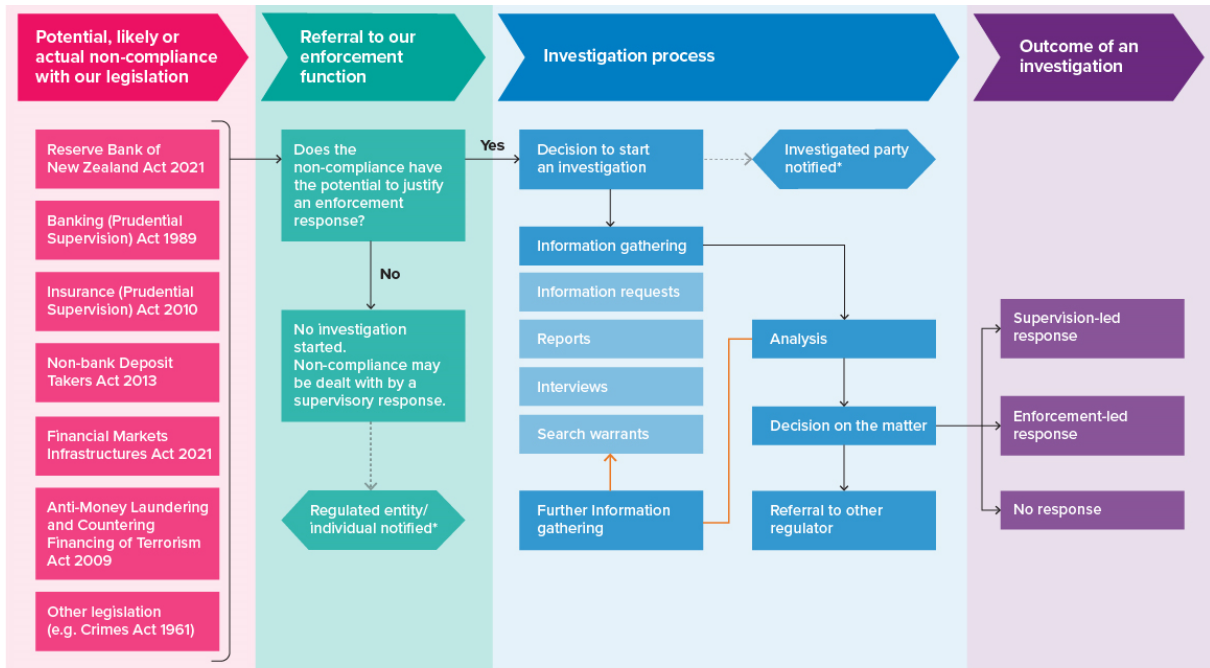
¹ The legislation which is enforced specifically by the Reserve Bank is the Reserve Bank of New Zealand Act 2021, the Banking (Prudential Supervision) Act 1989, the Insurance (Prudential Supervision) Act 2010, the Non-bank Deposit Takers Act 2013, the Financial Markets Infrastructures Act 2021, and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

² Our Enforcement Guidelines provide a further outline of these documents.

Investigations into non-compliance

Our enforcement function is operationally separate from our supervision functions, but all work closely together to achieve our financial stability objective and the specific purposes and objectives of our legislation.

The diagram below shows, at a high-level, the lifecycle of an investigation by the enforcement function. We provide further detail on each of the phases of an investigation below.



*This may or may not occur

Referral to our enforcement function

Any compliance issue that has *the potential to justify an enforcement response* may be referred to our enforcement function for consideration. These could be instances of potential, likely, or actual non-compliance with our legislation. Consideration by our enforcement function does not automatically mean that an investigation will be opened.

A referral to the enforcement function typically comes from our supervision functions³ but potential non-compliance may also be brought to the attention of our enforcement function through other means such as thematic reviews, referrals from other regulators, our wider monitoring of the financial system, or via members of the public or our public whistleblowing process.⁴

After an issue has been referred to our enforcement function for consideration, the Reserve Bank will make a decision on whether it is appropriate to open an investigation. We will prioritise the investigation of matters that pose a risk to us fulfilling our financial stability objective and/or achieving the specific purposes and objectives of our legislation (see discussion on the application of our Enforcement Principles and Criteria below).

³ Supervision may detect non-compliance in various ways including through self-reporting of non-compliance by regulated entities.

⁴ Special considerations may apply under the Protected Disclosures Act 2000 to the investigation of a whistleblowing complaint (e.g., to protect the identity of the whistleblower).

The decision to open an investigation will be made after considering the views of the relevant supervision function, our enforcement function, and any other relevant experts and stakeholders.

A decision not to investigate does not preclude the Reserve Bank from opening an investigation into the same non-compliance in the future if circumstances or priorities change, or further evidence becomes available.

With regards to matters involving our regulated entities, if an investigation is not opened, the relevant supervisor will inform the regulated entity of this decision in a timely way. Any non-compliance may then be dealt with through a supervisory response. Further information on our approach to supervision can be found in our [Statement of Prudential Policy](#).

Interaction with the banking material breach regime

Registered banks are subject to a material breach reporting regime relating to breaches of their Conditions of Registration (**CoRs**), credit rating requirements, and Orders in Council.⁵ Matters that the Reserve Bank considers are likely to be actual material breaches of CoRs and credit rating requirements may be published on our material breach register. Material breaches are determined by our prudential supervision function based on clear evidence or are admitted to by registered banks.

The material breach reporting regime is a feature of the registered bank disclosure regime, and is not directly connected to the Investigation Guidelines contained in this document. Publication on the [material breach register](#) does not indicate that the matter is automatically being investigated by our enforcement function, or that an enforcement response will be taken.

Matters included on the material breach register will be considered by the Reserve Bank in accordance with the referral process outlined above. If an investigation is commenced into a material breach the registered bank will be informed.

Investigation process

Investigations are led by our enforcement function. At a high level, an investigation involves gathering and assessing relevant information so that we can:

- form a view on whether the evidence collected is likely to be sufficient to prove a breach of the applicable legislation;
- apply our Enforcement Principles and Criteria to assess the seriousness and impact of the conduct; and
- determine the most appropriate response.⁶

Generally, our investigations are not conducted publicly and we will not publicly communicate a decision to begin an investigation unless it is necessary to do so. If we intend to publicly disclose the fact of an investigation we will communicate our intention to the investigated party before we make that disclosure.⁷

⁵ Under this regime registered banks are each subject to a requirement to report as soon as practicable when they become aware of information that leads them to form a belief that they have breached, may have breached, or may be likely to breach, one of the above requirements in a material respect.

⁶ The Enforcement Guidelines outline the range of responses available to us.

⁷ The Financial Stability Report (FSR) may include information on investigations that are under way on an anonymised basis. We will not necessarily communicate the inclusion of an anonymised matter in the FSR to an investigated party prior to publication of the FSR.

We also expect an investigated party to keep the fact of an investigation (and its scope) confidential. We acknowledge that in some cases an investigated party may consider it necessary to disclose the fact that it is the subject of an investigation to comply with its legal disclosure obligations. We expect an investigated party to inform us of any such disclosure before it is made.

Appointment of an investigator

After a decision has been made to commence an investigation, we may appoint an investigator (or enforcement officer) in accordance with the relevant legislation. The investigator (or enforcement officer) may conduct the investigation in accordance with the legislative powers relevant to the legislation which is the subject of the investigated non-compliance and these Investigation Guidelines.

Communication with investigated parties

When an investigation is opened

What we are able to communicate and when we do so will depend on the individual case. As soon as we are reasonably able to do so in the context of the investigation, we will contact an investigated party to let them know that we have opened an investigation and the nature of the investigated non-compliance. We will also provide the investigated party with their main point of contact at the Reserve Bank for the investigation.

In some circumstances, it will not be reasonably possible for us to communicate this information at the beginning of an investigation. For example, where contacting an investigated party may compromise the investigation.

During an investigation

After the initial communication is made, we aim to provide an investigated party with progress updates during the investigation when we are able to do so and if they are requested. We will also, when we are reasonably able to do so, communicate any changes in the scope of our investigation.

We will take reasonable steps to provide investigated parties with a chance to comment on, or provide evidence about, the non-compliance that we are investigating during the investigation. This will generally take the form of a written request for information, although in some cases we may also seek to speak to one or more individuals.

When an investigation has been completed

We will inform the investigated party when an investigation has been completed. The investigated party should not assume that the investigation has been completed until it receives confirmation of completion in writing.

We will also take reasonable steps to advise the investigated party of any decision to refer the investigated non-compliance to another agency (as discussed further below).

Other communications

When a regulated entity is the subject of an investigation, communications relating to issues outside the scope of the investigation will continue to be made through the regulated entity's supervisor(s) at the Reserve Bank. This includes other compliance issues that are not related to the investigated non-compliance. This approach allows the supervisor to focus on ongoing supervision

and remediation while allowing our enforcement function to engage with the investigated party on the matters concerning the investigation.

Information gathering

We may gather information from a variety of sources in the course of an investigation as different parties may hold the information we require. For example, we may obtain information from the investigated party, related parties, other industry participants, overseas authorities, or members of the public.

Which investigative tools we use will depend on the legislation relevant to the investigated non-compliance. These tools include formal notices for information or reports, and search warrants. We may also voluntarily request information or interviews.

Information provided to our supervision functions in the course of the supervisory relationship that is relevant to the investigated non-compliance may be used by our enforcement function as part of the general body of evidence. We may also use publicly available information.

Information requests

In some circumstances we can issue formal notices under our legislation requiring certain persons or entities to supply information to us. We are also able to seek and receive information voluntarily from persons or entities who are willing to assist us.

If you are the recipient of a request for information and we make no reference to seeking the information under a specific statutory power, you should assume that the request is a voluntary request. That means that you do not need to respond to it. You may wish to seek legal advice on a voluntary request before responding to it.

However, where appropriate, and permitted by the relevant legislation, we may issue a formal notice to compel the production of information. In most cases, the use of formal notices are preferable to voluntary requests because:

- it may be an offence to fail to comply with a formal notice;
- we require information to be provided within a timeframe that we set in a formal notice;
- the recipient of a formal notice may be under a legal obligation, such as an obligation of confidence, and feel unable to provide the information unless they are compelled; or
- the recipient of a formal notice, for other reasons, may feel more 'protected' by a formal notice.

To help ensure that our information requests are well targeted, we may discuss the scope and timeframe of an information request with the recipient before issuing a formal notice.

We will not issue a formal notice that directly requires copies of legal opinions and/or other privileged material. However, if the response to a more general request in a formal notice may include privileged material, there are some protections available under our legislation. If you are the recipient of a formal notice and are intending to withhold information requested on the grounds of privilege, we advise you to seek independent legal advice on whether the withholding grounds are sound. A further process may be required to resolve whether you have a legitimate claim of privilege to the information.

Upon receiving a formal notice you are legally obligated to comply with it (including its specified timeframes). It is an offence to fail to do so without lawful justification or excuse. The formal notice will set out the legislative powers we have relied on to issue the formal notice and state your obligations. The obligations on recipients of notices depends on the legislation under which it is issued.

Reports

Some of our legislation enables us to require an investigated party, or other parties, to prepare and supply reports for the purposes of investigating non-compliance. Reports may require the investigated party, or an approved person, to analyse information and address specific issues requested by the Reserve Bank.

Requiring the investigated party to complete the analysis can help to expedite investigations as the investigated party is often best placed to assess the relevant data and provide commentary. As with information requests issued under a formal notice, it is an offence to fail to produce a report when required without lawful justification or excuse.

Interviews

As part of an investigation we may ask an investigated party, its representatives, or other persons to attend a formal interview to discuss the non-compliance.

Before the interview we will provide the interviewee(s) with information relating to the investigation so that they can understand the relevant context. The extent of information we provide will depend on the person being interviewed (whether it is the investigated party or its representatives) and the extent to which the investigated non-compliance is commercially sensitive. We will not generally provide a list of the questions which we intend to ask in the interview in advance of the interview.

If you are asked to attend a formal interview, you may also bring a lawyer or support person to your interview, and may request, or bring, a professional interpreter if you cannot speak, or understand, English.

These interviews will be voluntary. That means that if you are attending an interview, you are not required to answer any questions and may end the interview at any time. You may request a break in the interview at any time, including to consult your lawyer. You are also entitled to the same privileges in answering questions as witnesses have in proceedings before a court.

Anything that is said in an interview may be used in evidence against you or others. As these interviews may be used for evidential purposes we will ask for your agreement that either an audio or video recording is made of the interview.

At the end of the interview you will be given an opportunity to listen to, or watch, the interview again to ensure that everything said in it was accurate. As soon as we are reasonably able to do so in the context of the investigation, we will provide you with a copy of your interview if you request it.

If we are investigating non-compliance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT Act**) we may use the powers given to us as an AML/CFT supervisor. These powers include the power, in some circumstances, to require any employee, officer, or agent of the regulated entity to answer questions relating to its records and documents and to provide any other information that we may reasonably require. If we are using these

powers under the AML/CFT Act we will provide the interviewee with an overview of their rights and obligations prior to asking the questions.

Search warrants

Some of our legislation also gives us the power in certain circumstances to obtain evidence through a warrant to enter and search a place. We apply for a search warrant when we are unable to obtain evidence required for an investigation in a less intrusive way, or if alternative information gathering methods are inappropriate or ineffective.

When we execute a search warrant a copy will be provided to the occupier or, if they are not present, will be left behind at the place. We must execute the search warrant in a manner that is lawful and reasonable.

Part 4 of the Search and Surveillance Act 2012 explains the obligations on a person during the execution of a search warrant and on the powers that we have during the execution of a search warrant.

Outcome of an investigation

Once our investigation is complete, we will make a decision on the appropriate response after considering the facts of the case in light of our Enforcement Principles and Criteria.

We have a variety of tools available to us to respond to non-compliance. These range from tools used as part of normal or heightened supervision (e.g., escalated engagement with the regulated entity and its board or imposing additional reporting obligations) to more coercive responses (e.g., warnings, enforceable undertakings, or court-based responses). We are able to use a proportionate approach to escalate and intensify our actions as appropriate. In some cases, an appropriate response may be to close the investigation without taking enforcement or supervisory response.

Further information on the responses available to us and how we apply our Enforcement Principles and Criteria in reaching a decision is contained in our [Enforcement Guidelines](#).

Other points

Obstruction of investigations

We encourage investigated parties to cooperate with our investigations in an open and honest way. It is an offence under certain parts of our legislation to obstruct an investigation by the Reserve Bank. In many circumstances, it is also an offence to provide the Reserve Bank with false or misleading information. The Crimes Act 1961 creates additional offences, punishable by imprisonment, which may apply if a person deliberately attempts to frustrate or defeat an investigation.⁸

Dealing with information

We will handle all information we obtain in the course of an investigation responsibly. This includes using information only as allowed by the law and taking reasonable steps to ensure that we provide adequate protections over private, confidential, or commercially sensitive information.

⁸ See sections 108 to 117 of the Crimes Act 1961.

Where a party provides us with information that they believe is confidential or commercially sensitive, they should clearly assert that qualification when (or before) they provide the information to us. We will not always accept at face value a party's assertion that information is confidential or commercially sensitive, and we may test this with the provider of the information.

Depending on the legislation under which we obtained information, we may have a general obligation to keep that information confidential. There are also a number of other enactments which bear on the way that we are required to deal with information.

At all times, we will balance parties' rights and expectations as to the confidentiality of information they supply to us against the need for us to effectively and efficiently conduct our investigations, and our legal obligations.

Where we take a court proceeding, commercially sensitive information (along with all the other relevant information we hold relating to that proceeding) will become subject to the disclosure or discovery requirements of the relevant court. Where necessary to do so, we will use the court's processes to protect confidential information from public disclosure.

Official Information Act

As a public sector agency, information we receive may be subject to release under the Official Information Act 1982.

However, there are a number of reasons that the Reserve Bank may withhold information from disclosure. These include situations where disclosure would prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.⁹

Privacy Act

During an investigation we may collect personal information about individuals or may be given personal information about individuals.¹⁰ Personal information we receive will be collected, used, stored, and disposed of in compliance with the Privacy Act 2020.¹¹

Information sharing

Our enforcement function may receive information that has been provided by the investigated party to our supervision functions prior to the commencement of, or during, an investigation. We will use this information when assessing whether to open an investigation and when determining the appropriate response. Once the evidence is passed to our enforcement function, it will be considered as part of the general body of evidence relating to the investigated non-compliance.

We may also use any information (other than personal information) obtained or held by us in the exercise of our powers or the performance of our functions and duties under any of our other legislation for the purpose of exercising our powers or performing our functions and duties under the AML/CFT Act as an AML/CFT supervisor.¹²

⁹ See section 6 of the Official Information Act 1982.

¹⁰ If we are collecting personal information, we can only collect this from an individual if there is a lawful purpose that is connected with a function or activity of the Reserve Bank (such as an investigation) and collection of personal information is necessary for that purpose (such as to help determine whether a breach has likely been committed).

¹¹ Personal information is defined as information about an identifiable individual and individual is defined as a natural person, other than a deceased natural person under the Privacy Act 2020.

¹² See section 137(2) of the AML/CFT Act.

During an investigation we may seek the views of other functions within the Reserve Bank. In those cases, we may share evidence gathered during an investigation with other functions such as legal, policy, and supervision to obtain their views on the investigated non-compliance.

Working with other regulators

On occasion, it will be appropriate for us to work with other regulators, especially where the non-compliance is interconnected with (non-)compliance under another regime. In some instances, it may be more appropriate for us to refer a matter to another domestic or international regulator. In every case, we will continue to seek to achieve our purpose and objectives and will coordinate with other regulators where appropriate.¹³

You can find our Memoranda of Understanding with other regulators on our [website](#). These memoranda set out an indication of how we will approach our relationship with other regulators and the sharing of information. To avoid doubt, any personal information will be shared in accordance with the Privacy Act 2020.

We are also a member of the Council of Financial Regulators which facilitates cooperation and coordination between us; the Treasury, the Ministry of Business, Innovation and Employment, the Financial Markets Authority, and the Commerce Commission, to support effective and responsive regulation of the financial system.

Application of the Enforcement Principles and Criteria

Our Enforcement Principles and Criteria apply to all matters of serious non-compliance that are dealt with by our enforcement function.

We approach every investigation in an objective, fair, and impartial way and apply our Enforcement Principles and Criteria as a lens that informs our decision-making throughout an investigation. Below, we highlight some examples of how our Enforcement Principles and Criteria will be applied to an investigation.

Risk-based

A risk-based approach enables us to be proactive and forward-looking by ensuring that our enforcement resources are used where risk is greatest and where they can have the most impact.¹⁴

We have a low tolerance for clear instances of non-compliance by regulated entities that may impact our financial stability objective or on our ability to achieve the specific purposes of our legislation. We also have a low tolerance for clear instances of our regulated entities not complying with their obligations under the AML/CFT Act.

Our risk-based approach involves an assessment of the nature of the regulated entity, seriousness of non-compliance, significance of the issue, and the circumstances of the non-compliance. As our enforcement function has limited resources, we will use this risk-based approach to prioritise the investigation of issues that are likely to have a greater impact on our financial stability objective or our specific legislative purposes.

¹³ See section on 'Collaborative working' in our Statement of Prudential Policy.

¹⁴ Enforcement Principles and Criteria.

Proportionate

The proportionality principle means that the burden and cost of an enforcement response should be proportionate to the relevant non-compliance, level of harm involved, and expected benefits from that enforcement response, for both us and our regulated entities. We will determine our investigative approach after considering aggravating and mitigating factors of a case, the broader compliance context, and internally developed precedent.¹⁵

We apply our proportionality principle during an investigation as follows:

- When considering whether to open an investigation we weigh the non-compliance against the potential benefits or detriment that may result from an investigation and any eventual response. We also consider whether it would be more appropriate for one of our supervision functions to address the non-compliance without referral to our enforcement function given the nature of the non-compliance.
- During an investigation, we seek all reasonably available relevant information, and we base our decisions on the totality of the information before us. This includes gathering information that may disclose both aggravating and mitigating factors relating to the non-compliance. We consider all information thoroughly, and with an open-mind as to the outcome.
- We recognise that our investigations can have important consequences for investigated parties or for third parties who are incidentally affected. We are also aware of the burden that information requests and other investigative tools can have on the resources of recipients of such requests. We will take these considerations into account when deciding on the appropriate information gathering tools when conducting an investigation.

Transparent

The transparency principle promotes accountability by ensuring that the public, regulated entities, and other stakeholders are aware of our enforcement processes and responses. Transparency has two important factors, transparency of process and transparency of outcome.¹⁶

We apply our transparency principle during an investigation by:

- Aiming to be as open and transparent as we can be while acknowledging that there are limits to our ability to be open and transparent during an investigation. For example, where providing information to the investigated party may limit our ability to collect further evidence.
- Engaging openly and honestly with investigated parties in accordance with our [Relationship Charter](#).¹⁷

¹⁵ Enforcement Principles and Criteria.

¹⁶ Enforcement Principles and Criteria.

¹⁷ We have introduced the Relationship Charter to banks and insurers, and will be discussing it with our other regulated sectors over time.

- Informing the investigated party of the progress of an investigation and taking reasonable steps to provide investigated parties with a chance to comment during our investigation, including through information requests and interviews.

Enforcement criteria

Our enforcement criteria guide our investigation strategy by directing our information gathering efforts towards obtaining information that will help us fully understand the issue and reach a robust decision on an appropriate outcome.

The **seriousness of conduct** criterion will guide our investigation into the prevalence, impact, and magnitude of non-compliance. The **responsiveness** criterion will guide our investigation into the investigated party's conduct in resolving the non-compliance. Consideration of the **efficacy** criterion will ensure that the body of evidence that we are collecting through an investigation is complete enough to allow us to take a robust decision on the appropriate outcome.

We also note that cooperation by the investigated party with our investigation may be considered as a mitigating factor under the **responsiveness** criterion when determining the appropriate enforcement response. More information on the Enforcement Principles and Criteria and how they are used in determining the appropriate response can be found in our [Enforcement Principles and Criteria](#) and the [Enforcement Guidelines](#).

Updates to the Enforcement Framework

The Enforcement Framework consists of living documents that will be regularly reviewed and updated. As our enforcement function matures and further internal processes are refined, we will look to update the Enforcement Framework guidance to provide further clarity on our processes to stakeholders and regulated entities. We welcome any comments on these Investigation Guidelines. Please provide any using the email address Enforcement.Consultation@rbnz.govt.nz.

Glossary

Investigation refers to compliance issues that are being investigated by our enforcement function.

Formal notice means a notice to compel the supply of information to the Reserve Bank.

Information includes but is not limited to papers, documents, records, data, or forecasts and also statements created in response to questions asked.

Investigated party means a regulated entity or individual that is or has been under investigation by our enforcement function.

Our legislation means the Reserve Bank of New Zealand Act 2021, Banking (Prudential Supervision) Act 1989, Insurance (Prudential Supervision) Act 2010, Non-bank Deposit Takers Act 2013, Financial Markets Infrastructures Act 2021, and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Privileged material is material that cannot be used in evidence or enquired into by our enforcement function.

Regulated entity has the meaning given to it in section 5 of the Reserve Bank of New Zealand Act 2021 and includes the relevant reporting entities which the Reserve Bank is responsible for supervising under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Serious non-compliance includes activity that breaches laws that we are responsible for administering. This includes prevalent or material non-compliance that has been identified by the regulator, or admitted by the regulated entity through statutory disclosure and reporting.