

Version
as at 1 July 2022



Non-bank Deposit Takers Act 2013

Public Act 2013 No 104
Date of assent 3 December 2013
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Reserve Bank of New Zealand.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Non-bank Deposit Takers Act 2013.

2 Commencement

- (1) This Act comes into force, except as provided in subsection (3), on the earlier of—
- (a) a date appointed by the Governor-General by Order in Council; and
 - (b) 1 October 2017.
- (2) One or more Orders in Council may be made under subsection (1) appointing different dates for different provisions (and in this subsection **provision** includes any item, or any part of an item, in Schedule 4).
- (3) Subsections (2) and (4) of section 91 come into force on the date that is 1 year after the date on which section 11 comes into force.
- (4) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 2(1)(a): this Act (except section 91(2) and (4), and sections 94–101) brought into force, on 1 May 2014, by clause 2 of the Non-bank Deposit Takers Act Commencement Order 2014 (LI 2014/14).

Section 2(1)(a): sections 94–101 brought into force, on 1 December 2014, by clause 2 of the Non-bank Deposit Takers Act Commencement Order (No 2) 2014 (LI 2014/321).

Section 2(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is—

- (a) to promote the maintenance of a sound and efficient financial system; and
- (b) to avoid significant damage to the financial system that could result from the failure of an NBDT.

Compare: 1989 No 157 s 157A

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

approved rating agency means a rating agency approved by the Bank under section 86

associated person, in relation to an NBDT, means—

- (a) a person that directly or indirectly controls the management of the NBDT; or
- (b) a person that has a direct or indirect qualifying interest in 20% or more of the voting securities issued by the NBDT; or
- (c) a person whose management is controlled, directly or indirectly, by the NBDT; or
- (d) a person in whose voting securities the NBDT has a direct or indirect qualifying interest of 20% or more

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

borrowing group, in relation to an NBDT, means the NBDT and all its guaranteeing subsidiaries

capital ratio, in relation to an NBDT or borrowing group, means the level of capital in relation to the credit exposures and other risks of the NBDT or borrowing group

debt security means—

- (a) a debt security within the meaning given in section 8 of the Financial Markets Conduct Act 2013; or
- (b) any other security declared by regulations to be a debt security for the purposes of this Act

director means—

- (a) a person occupying a position of director by whatever name called; or
- (b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

document means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing which identifies or describes a thing of which it forms part, or to which it is attached; and
 - (ii) a book, map, plan, graph, or drawing; and
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information

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 trust, the trustees:
- (c) in relation to a unit trust, the manager:
- (d) in relation to a partnership, unincorporated joint venture, 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, unincorporated joint venture, or other unincorporated body of persons; or
 - (ii) if there is no board or other persons or body as described in subparagraph (i), the partners of the partnership or members of the unincorporated joint venture or other unincorporated body of persons

governing document means the rules and instruments constituting, or defining the constitution of, an entity

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)

guaranteeing subsidiary, in relation to an NBDT, means a subsidiary of the NBDT that—

- (a) is unconditionally liable (whether or not jointly or severally with the NBDT or any other person) to repay all the debt securities issued by the NBDT; or
- (b) is liable to repay all the debt securities issued by the NBDT subject only to the condition that the NBDT or any other person has failed to do so

level 1 penalty means the penalty set out in section 64(4)

level 2 penalty means the penalty set out in section 64(3)

level 3 penalty means the penalty set out in section 64(2)

level 4 penalty means the penalty set out in section 64(1)

licence means an NBDT licence granted by the Bank under section 17

licensed NBDT means—

- (a) an NBDT that has been granted a licence and whose licence has not been cancelled; or
- (b) a person that has been granted a licence on the basis that it is not yet, but proposes to be, an NBDT, and whose licence has not been cancelled

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

NBDT means a non-bank deposit taker, and is defined in section 5

NBDT regulated offer—

- (a) means a regulated offer within the meaning of section 41 of the Financial Markets Conduct Act 2013; and
- (b) includes an offer of debt securities that would be a regulated offer within the meaning of that section if clause 3(2)(b) and (3)(a) of Schedule 1 of that Act were not in force; and
- (c) includes an offer of debt securities to the public in New Zealand to which the Securities Act 1978 applied before its repeal or to which that Act applies or applied under Schedule 4 of the Financial Markets Conduct Act 2013

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

qualifying interest, in relation to a security, means—

- (a) the legal or beneficial ownership of the security; or
- (b) the power to exercise, or control the exercise of, any voting rights attached to the security; or
- (c) the power to acquire or dispose of the security; or
- (d) the power to control the acquisition or disposition of the security by another person; or
- (e) the powers referred to in paragraphs (b) to (d) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the security

regulations means regulations made under this Act

related party, in relation to an NBDT, has the meaning set out in section 6

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

senior officer, in relation to an NBDT,—

- (a) means a person occupying a position that allows the person to exercise significant influence over the management or administration of the NBDT (for example, a chief executive or a chief financial officer); and
- (b) includes any class or classes of persons declared by regulations to be senior officers for the purposes of this Act; but
- (c) does not include any class or classes of persons declared by regulations not to be senior officers for the purposes of this Act

subsidiary means—

- (a) a subsidiary within the meaning of sections 5 to 8 of the Companies Act 1993; or
- (b) a company, or body corporate, or association of persons that is classified as a subsidiary in any applicable financial reporting standard (as that term is defined in section 5(1) of the Financial Reporting Act 2013)

suitability concerns means the matters, circumstances, or conditions, identified in regulations, that must be drawn to the attention of the Bank if any 1 or more of them apply to a director or senior officer, or proposed director or senior officer, of an NBDT or proposed NBDT

suitability notice is a notice, in relation to a director or senior officer, or proposed director or senior officer, of an NBDT or proposed NBDT, that is supplied to the Bank and meets the requirements of section 15

trust deed, in relation to an NBDT, means a trust deed that is required, by or under any of the following, in relation to debt securities (as defined in this Act) offered by or on behalf of the NBDT:

- (a) subpart 1 of Part 4 of the Financial Markets Conduct Act 2013 or an exemption granted under that Act;
- (b) a condition under section 19(1)(fa);
- (c) the Securities Act 1978 or an exemption granted under that Act

trustee, in relation to an NBDT,—

- (a) means a licensed supervisor (within the meaning of the Financial Markets Conduct Act 2013) who is designated or appointed, by or under any of the following, as the trustee for any debt security offered by or on behalf of the NBDT:

- (i) a trust deed:
- (ii) an exemption granted under the Financial Markets Conduct Act 2013:
- (iii) the Financial Markets Supervisors Act 2011:
- (iv) a condition under section 19(1)(fa):
- (b) includes a trustee (as defined in the Securities Act 1978) that is required, by or under that Act or an exemption granted under it, in relation to any debt security offered by or on behalf of the NBDT

voting right, in relation to any body,—

- (a) means a currently exercisable right to cast a vote at meetings of shareholders or members of that body; but
 - (b) does not include a right to vote that is exercisable only in 1 or more of the following circumstances:
 - (i) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
 - (ii) on a proposal that affects rights attached to the security that confers the voting right:
 - (iii) on a proposal to put the body into liquidation or voluntary administration:
 - (iv) on a proposal for the disposal of the whole, or a material part, of the property, business, or undertaking of the body:
 - (v) during the liquidation, receivership, voluntary administration, bankruptcy, or statutory management of the body; and
 - (c) does not include a right to vote that is exercisable only for a special, immaterial, or remote matter that is inconsequential to the control of the body.
- (2) In this Act, **offer of debt securities to the public** must be construed in a manner consistent with the construction and use of **offer of securities to the public** as set out in section 3 of the Securities Act 1978, but with the modification that references to securities must be taken as being references to debt securities as defined in this Act.

Compare: 1989 No 157 ss 2(1), 157B

Section 4(1) **Bank**: replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 4(1) **debt security** paragraph (a): amended, on 1 December 2014, by section 95(1).

Section 4(1) **Governor**: replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 4(1) **NBDT regulated offer**: inserted, on 1 December 2014, by section 95(3).

Section 4(1) **trust deed**: replaced, on 1 December 2014, by section 95(3).

Section 4(1) **trustee**: replaced, on 1 December 2014, by section 95(3).

5 NBDT defined

- (1) In this Act, **NBDT** means any of the following:
- (a) a person that—
 - (i) makes an NBDT regulated offer of debt securities; and
 - (ii) carries on the business of borrowing and lending money, or providing financial services, or both:
 - (b) a person, or a member of a class of persons, that is declared by regulations made under section 73(1)(c) to be an NBDT for the purposes of this Act:
 - (c) a person that—
 - (i) is, or has been at any time since this section came into force, an NBDT; and
 - (ii) has debt securities that remain unpaid and that were offered under an NBDT regulated offer:
 - (d) a person that—
 - (i) was a deposit taker (as defined in section 157C of the Reserve Bank of New Zealand Act 1989) on or after 3 August 2011 but before this section came into force; and
 - (ii) has debt securities that were issued to the public in New Zealand before this section came into force and that remain unpaid.
- (2) Despite subsection (1), the following are not NBDTs:
- (a) a bank that is a registered bank under the Banking (Prudential Supervision) Act 1989:
 - (b) a local authority:
 - (c) the Crown (as defined in the Public Finance Act 1989):
 - (d) an entity that is in receivership (provided that no debt securities are being offered under an NBDT regulated offer by, or on behalf of, the entity):
 - (e) an entity that is in liquidation (whether under Part 16 of the Companies Act 1993 or under any other enactment):
 - (f) a person, or a member of a class of persons, declared by regulations made under section 73(1)(d) not to be an NBDT for the purposes of this Act.

Compare: 1989 No 157 s 157C

Section 5(1)(a)(i): replaced, on 1 December 2014, by section 96(1).

Section 5(1)(c)(ii): replaced, on 1 December 2014, by section 96(2).

Section 5(2)(a): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 5(2)(d): amended, on 1 December 2014, by section 96(3).

6 Related party defined

- (1) A person (**person A**) is a **related party** of an NBDT in each of the following cases:
- (a) person A is a director or senior officer of the NBDT or of any of its guaranteeing subsidiaries:
 - (b) person A is a relative of a director or senior officer of the NBDT or of any of its guaranteeing subsidiaries:
 - (c) person A is a subsidiary of the NBDT or of any of its guaranteeing subsidiaries:
 - (d) person A has a substantial interest in the NBDT or in any of its guaranteeing subsidiaries:
 - (e) person A is a person in which the NBDT or any of its guaranteeing subsidiaries has a substantial interest:
 - (f) another person with a substantial interest in the NBDT or any of its guaranteeing subsidiaries has a substantial interest in person A:
 - (g) 40% or more of person A's governing body are the same persons as 40% or more of the governing body of—
 - (i) the NBDT or any of its guaranteeing subsidiaries; or
 - (ii) another person that has a substantial interest in the NBDT or any of its guaranteeing subsidiaries:
 - (h) person A is a person, or a member of a class of persons, declared by regulations to be a related party.
- (2) In this section, a person (**person B**) has a **substantial interest** in an entity if—
- (a) person B has control, directly or indirectly, or significant influence over 25% or more of the composition of the governing body of the entity; or
 - (b) where the entity is a company,—
 - (i) person B owns, or in any way has the power to control, directly or indirectly, or has the right to acquire, 10% or more of the ordinary shares or the voting rights of the entity; or
 - (ii) person B has, by any other means, 10% or more of the control of the entity; or
 - (c) where the entity is not a company,—
 - (i) person B is in a position to control, directly or indirectly, 10% or more of the voting rights in relation to the entity; or
 - (ii) person B has, by any other means, 10% or more of the control of the entity.

Compare: 1989 No 157 s 157B; SR 2010/167 r 4

7 Bank's function under this Act

The function of the Bank under this Act is to act as the prudential regulator and licensing authority for NBDTs and to perform any other functions imposed by or under this Act.

8 Principles to take into account when exercising powers

When performing its functions and exercising its powers under this Act, the Bank must take into account the following principles:

- (a) the desirability of consistency in the treatment of similar institutions, regardless of matters such as their corporate form:
- (b) the importance of recognising—
 - (i) that it is not the purpose of this Act to eliminate all risk in relation to the performance of NBDTs or to limit diversity among NBDTs; and
 - (ii) that depositors are responsible for assessing risk in relation to potential investments and for their own investment choices:
- (c) the desirability of providing to depositors adequate information to enable them to assess risk in relation to potential investments and to distinguish between high-risk and low-risk NBDTs:
- (d) the desirability of sound governance of NBDTs:
- (e) the desirability of effective risk management by NBDTs:
- (f) the need to avoid unnecessary compliance costs:
- (g) the need to maintain competition within the NBDT sector.

Compare: 1989 No 157 s 157F

9 Bank to have regard to directions about government policy objectives

[Repealed]

Section 9: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

10 Act binds the Crown

This Act binds the Crown.

Part 2**Licensing and prudential regulation****Subpart 1—Licensing****11 NBDTs to be licensed**

- (1) Every NBDT must be licensed.

- (2) A person that is an NBDT and is not a licensed NBDT commits an offence and is liable on conviction to a level 4 penalty.
- (3) *See* section 87 for the application of this section to persons who are NBDTs immediately before this section comes into force.

12 No holding out

- (1) A person that is not an NBDT must not, directly or indirectly, hold out that the person is an NBDT.
- (2) A person that is not licensed as an NBDT must not, directly or indirectly, hold out that the person is a licensed NBDT.
- (3) A person that breaches subsection (1) or (2) commits an offence and is liable on conviction to a level 4 penalty.

Process for obtaining licence

13 Application for NBDT licence

- (1) Any person may apply to the Bank to be licensed as an NBDT.
- (2) Every application for a licence must—
 - (a) be in a form, and include the information, specified by the Bank; and
 - (b) include the prescribed application fee (if any); and
 - (c) include a suitability notice for each director and senior officer, or proposed director or senior officer, of the applicant.
- (3) In sections 14 to 20, a reference to an NBDT includes a reference to a person that is not an NBDT but proposes to be an NBDT after it is granted a licence.

Compare: 2010 No 111 ss 17, 18

14 Determining applications for licence

- (1) The Bank must not grant a licence to an applicant unless—
 - (a) the Bank is satisfied that the applicant, if licensed, would be able to comply, on an ongoing basis, with this Act and the regulations (having regard to any exemptions granted or likely to be granted under section 70), and the proposed conditions (if any) of its licence; and
 - (b) the Bank has received a suitability notice for each director and senior officer, or proposed director and senior officer, of the applicant and the Bank has issued a notice of non-objection in relation to any such person who raises suitability concerns.
- (2) In determining an application, the Bank must have regard to the following:
 - (a) whether the applicant's ownership, and its incorporation and ownership structure, is appropriate having regard to the size and nature of the applicant's business or proposed business, or any part of the business or proposed business:

- (b) whether the applicant will be able to comply, on an ongoing basis, with all relevant requirements of the Financial Markets Conduct Act 2013, the Securities Act 1978, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, and any relevant regulations made under those Acts:
 - (c) whether any other activities or businesses carried on, or proposed to be carried on, by the applicant are compatible with the business of being an NBDT:
 - (d) whether, in the case of an applicant that is an overseas person, the law and regulatory requirements of the applicant's home jurisdiction are satisfactory in relation to the following:
 - (i) prudential supervision:
 - (ii) the duties and powers of directors:
 - (iii) the disclosure of financial and other information:
 - (iv) the licensing, registration, or authorisation of the overseas person:
 - (e) any other matters identified in regulations as matters to which the Bank must have regard.
- (3) Subsection (1) does not limit the grounds on which the Bank may otherwise refuse to grant a licence.

Compare: 1989 No 157 ss 73, 73A

Section 14(2)(b): amended, on 1 December 2014, by section 97.

15 Requirements of suitability notices

- (1) A **suitability notice** must certify that a named director or senior officer, or proposed director or senior officer, of an NBDT—
- (a) does not raise any suitability concerns; or
 - (b) does raise 1 or more suitability concerns.
- (2) If a suitability notice states that the person named in it raises 1 or more suitability concerns, the notice must also—
- (a) identify the relevant suitability concern or concerns; and
 - (b) include any other information required by the Bank to be included in such notices.
- (3) Every suitability notice must be signed,—
- (a) if the person named is a director or proposed director of the NBDT, by the person himself or herself; and
 - (b) if the person named is a senior officer or proposed senior officer of the NBDT, by 2 directors of the NBDT.

- (4) Any person who signs a suitability notice and who knows, or ought to know, that the suitability notice is false or misleading in a material respect commits an offence and is liable on conviction to a level 3 penalty.

16 Dealing with suitability notices

- (1) When the Bank receives a suitability notice it may make whatever inquiries it thinks fit, including asking the person named in the notice, or any other person, to supply information or respond to queries, to assist the Bank to determine whether the person is unsuitable to be a director or senior officer (as the case may be) of the relevant NBDT.
- (2) If the suitability notice states that the person does not raise any suitability concerns, the Bank is entitled to rely on the certificate for the purpose of determining whether the person named is unsuitable to be a director or senior officer (as the case may be) of the NBDT, and may grant a licence without giving a notice of non-objection in respect of the person.
- (3) If a suitability notice states that the person raises 1 or more suitability concerns, the Bank must not grant a licence to the NBDT unless or until it gives a notice of non-objection in respect of the person.
- (4) The Bank may give a notice of non-objection in respect of a person who raises suitability concerns only if it is satisfied, after making inquiries, that the person is not unsuitable to be a director or senior officer (as the case may be) of the NBDT.
- (5) Subsection (4) applies whether the suitability concerns were identified in the suitability notice or came to the Bank's attention by any other means.
- (6) If, after making inquiries, the Bank is satisfied that a person named in a suitability notice is unsuitable to be a director or senior officer (as the case may be) of the NBDT, the Bank must notify the applicant that no licence will be granted to the applicant while the person is, or if the person becomes, a director or senior officer (as the case may be) of the NBDT.
- (7) Subsections (1) to (5) apply, with all necessary modifications, whenever the Bank is made aware that a person raises suitability concerns, and not just when a suitability notice is received in respect of a person in connection with an application for a licence.

17 Grant of licence

- (1) If the Bank grants a licence to an applicant, it must—
 - (a) give written notice of the decision to the applicant; and
 - (b) record the grant of the licence in the register of licensed NBDTs maintained under section 85.
- (2) If the Bank refuses to grant a licence, it must give written notice to the applicant, along with a statement of the Bank's reasons for the refusal.

Compare: 2010 No 111 s 25

*Conditions of licence***18 Licence may be subject to conditions**

- (1) An NBDT licence may be subject to conditions imposed by the Bank.
- (2) The Bank may impose conditions on a licence at the time it is granted, and may impose, amend, or remove licence conditions, in accordance with section 20, at any time after the licence is granted.
- (3) Every licensed NBDT must comply with the conditions of its licence.
- (4) A licensed NBDT commits an offence if it fails to comply with a condition of its licence and is liable on conviction to a level 3 penalty.

Compare: 2010 No 111 ss 21, 23

19 Kinds of licence conditions and their effect

- (1) The conditions of an NBDT licence may relate to any of the following:
 - (a) the incorporation and ownership structure of the NBDT;
 - (b) the suitability of the directors and senior officers of the NBDT, including requirements relating to the provision of suitability notices before appointment and the circumstances in which a director or senior officer may not be appointed or may be required to resign;
 - (c) any of the prudential obligations of the NBDT, as set out in subpart 2 or in regulations made under that subpart, including conditions that modify any of the requirements that would otherwise apply to the NBDT;
 - (d) the credit exposure concentration and other risk exposures of the NBDT;
 - (e) the size and nature of the NBDT's business or proposed business, or of any part of that business, including constraints on major acquisitions;
 - (f) in the case of an NBDT that has not commenced operating as an NBDT, when, or the time within which, it must commence operating as an NBDT;
 - (fa) in a case where subpart 1 of Part 4 of the Financial Markets Conduct Act 2013 would not otherwise apply in relation to debt securities issued or to be issued by an NBDT, requirements relating to compliance with that subpart (in whole or in part and with any modifications or variations specified in the conditions), including requirements to have a trustee and a trust deed for the debt securities;
 - (g) any other matters prescribed by regulations.
- (2) The Bank may not impose a licence condition that operates, or has the same effect, as an exemption granted under section 70.

Compare: 1989 No 157 s 73

Section 19(1)(fa): inserted, on 1 December 2014, by section 98.

20 Changing or removing conditions

The Bank may not impose new or additional conditions on, or amend or remove the existing conditions of, an NBDT's licence unless—

- (a) the Bank gives the NBDT not less than 7 working days' notice in writing of the Bank's intention to do so; and
- (b) the notice contains, or is accompanied by, a statement of the Bank's reasons for its proposed action; and
- (c) the NBDT has a reasonable opportunity to make submissions to the Bank; and
- (d) the Bank has regard to those submissions.

Compare: 1989 No 157 s 74; 2010 No 111 s 22

Cancellation of licence

21 Grounds for cancelling licence

The Bank may cancel a licence if it is satisfied—

- (a) that the licence was granted on the basis of information that was false or misleading in a material respect; or
- (b) that the licence holder is failing, or has failed, to comply with this Act or the regulations, or with relevant provisions of the Financial Markets Conduct Act 2013, the Securities Act 1978, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, or regulations made under those Acts; or
- (c) that the licence holder is failing, or has failed, to comply with 1 or more conditions of its licence; or
- (d) that the requirements of section 25 are not being met; or
- (e) that the licence holder is no longer an NBDT; or
- (f) that the licence holder has been wound up, dissolved, or otherwise ceased to exist; or
- (g) that the licence holder is failing, or has failed, to comply with the terms of a trust deed relating to an offer or issue of debt securities; or
- (h) that the licence holder has requested cancellation and the Bank is satisfied that it no longer requires a licence; or
- (i) that any other matter, prescribed by regulations as a ground on which the Bank may cancel a licence, applies.

Section 21(b): amended, on 1 December 2014, by section 99.

22 Procedure for cancelling licence

- (1) Before cancelling a licence, the Bank must send notice to the licence holder and the trustee of its intention to cancel the licence, and the notice—

- (a) must explain the reasons for the proposed cancellation; and
 - (b) must specify the date by which any objections by the licence holder to the cancellation must be received by the Bank (which must be not less than 10 working days after the date of the notice).
- (2) The Bank must have regard to any objections received.
- (3) If the Bank cancels a licence, it must—
- (a) give written notice of the cancellation to the licence holder and the trustee; and
 - (b) give public notice of the cancellation by publishing notice of it—
 - (i) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
 - (ii) on an Internet site maintained by or on behalf of the Bank.
- (4) Subsection (1) does not apply if the reason for the cancellation is that the licence holder has requested cancellation or has ceased to exist.

Subpart 2—Prudential obligations

Credit ratings

23 Licensed NBDTs to have current credit rating

- (1) A licensed NBDT must have a current rating of its creditworthiness or, if required by regulations made under section 24, the creditworthiness of its borrowing group, that—
- (a) complies with the requirements prescribed by regulations made under section 24; and
 - (b) is given by an approved rating agency.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 4 penalty.

Compare: 1989 No 157 ss 157I, 157ZR(a), 157ZX(1)

24 Regulations relating to credit ratings

- (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 either or both of the following purposes:
- (a) providing for the following matters in relation to ratings of creditworthiness required to be held by licensed NBDTs:
 - (i) the type of rating (for example, whether it is a short-term or long-term rating);
 - (ii) what the rating relates to (for example, whether it indicates the creditworthiness of an NBDT with respect to a specific financial obligation or applies to the NBDT's overall creditworthiness);

- (b) requiring a licensed NBDT to have a rating of creditworthiness of the borrowing group of which it is part.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 157K

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 24(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Governance requirements

25 Requirement for independent directors

- (1) If a licensed NBDT is a company, building society, or overseas company,—
- (a) the governing body of the NBDT must include at least 2 independent directors; and
- (b) the chairperson of the governing body of the NBDT must not be an employee of either the licensed NBDT or a related party.
- (2) In subsection (1), **independent director** means a director who—
- (a) is not an employee of either the NBDT or a related party; and
- (b) is not a director of a related party other than a related party that is a guaranteeing subsidiary; and
- (c) does not, directly or indirectly, have a qualifying interest in more than 10% of the voting securities of the NBDT or a related party.
- (3) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 s 157L(1)

26 Certain provisions in governing document of no effect

- (1) Any provision in the governing document of a licensed NBDT that permits a director of the NBDT to act otherwise than in what the director believes to be the best interests of the NBDT is of no effect.
- (2) Subsection (1) applies despite anything to the contrary in section 131 of the Companies Act 1993 or any other Act.

Compare: 2010 No 111 s 221

*Risk management programmes***27 Licensed NBDTs to have and comply with risk management programme**

- (1) Every licensed NBDT must have a risk management programme that complies with subsection (2) and must take all practicable steps to comply with that programme.
- (2) The risk management programme must—
 - (a) be in writing; and
 - (b) set out the procedures that the NBDT will use for effectively identifying and managing the following risks:
 - (i) credit risk;
 - (ii) liquidity risk;
 - (iii) market risk;
 - (iv) operational risk; and
 - (c) set out appropriate documentation and record-keeping requirements; and
 - (d) describe the steps that the NBDT will take to ensure that the programme remains current, which must include procedures for—
 - (i) regular review of the programme to systematically identify deficiencies in the effectiveness of the programme; and
 - (ii) obtaining trustee approval to amendments to the programme that are necessary to address such deficiencies; and
 - (e) be appropriate to the operations of the NBDT, having regard to the factors relevant to the risks referred to in paragraph (b) (for example, the size of the NBDT, its funding structure, the market sector in which it operates, its business strategy, and its relationship with its borrowing group).
- (3) The Bank may issue, in the manner that the Bank thinks fit, guidelines for the purpose of interpreting the risk categories referred to in subsection (2)(b) that must be covered by the risk management programme.
- (4) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 157M, 157ZR(c)

Section 27(3): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

28 Trustee role in risk management programmes

- (1) Every licensed NBDT must submit a copy of its risk management programme for trustee approval.

- (2) As soon as practicable after it receives a copy of a risk management programme, a trustee must inform the NBDT whether it is satisfied that the risk management programme meets the requirements in section 27(2).
- (3) If a trustee is not satisfied that the risk management programme meets the requirements in section 27(2),—
 - (a) the trustee may require the NBDT to amend the programme and to resubmit the programme for trustee approval within any reasonable time that the trustee may specify; and
 - (b) the NBDT must amend the programme and resubmit it for trustee approval.
- (4) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
Compare: 1989 No 157 ss 157N, 157ZR(d)

29 Risk management programmes to be reviewed

- (1) A trustee may require a licensed NBDT to have its risk management programme reviewed and reported on, in a specified manner, at the cost of the NBDT, within any reasonable time that the trustee may specify.
- (2) A review required under this section may, without limitation, include a review of the risk management programme itself, or of the manner in which it is being implemented or operated.
- (3) The NBDT must comply with a requirement of a trustee under subsection (1) within the time specified by the trustee.
- (4) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
Compare: 1989 No 157 ss 157O, 157ZR(e)

Minimum capital requirements

30 Regulations relating to minimum capital requirements

- (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 the purpose of imposing a requirement that licensed NBDTs and trustees ensure that trust deeds set out the minimum capital that licensed NBDTs, borrowing groups, or both are required to maintain.
- (2) Regulations made under this section may require trust deeds to set out a minimum amount of capital that licensed NBDTs, borrowing groups, or both are required to maintain.
- (3) Regulations made under this section may also do any of the following:
 - (a) provide that the amount of minimum capital specified in trust deeds must be not less than an amount prescribed in the regulations:

- (b) require that trust deeds define capital for the purpose of calculating the minimum capital required:
 - (c) specify a definition of capital for that purpose.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 157P

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 30(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

31 Ensuring minimum capital requirements included in trust deeds

- (1) Every licensed NBDT and trustee must comply with any requirement imposed by regulations made under section 30.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157Q, 157ZR(f), 157ZW(1)(a), 157ZX

32 Licensed NBDTs to maintain not less than minimum capital prescribed

- (1) Every licensed NBDT must maintain minimum capital of not less than the amount (if any) prescribed by a trust deed in compliance with regulations made under section 30.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 157R, 157ZR(g)

Capital ratio requirements

33 Regulations relating to capital ratios

- (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 the purpose of imposing a requirement that licensed NBDTs and trustees ensure that trust deeds include a capital ratio, calculated in accordance with a prescribed framework, that the NBDT must maintain.
- (2) Regulations made under this section may do 1 or more of the following:

- (a) provide for the capital ratio to be calculated in respect of either or both of the following:
 - (i) the licensed NBDT:
 - (ii) any borrowing group of which a licensed NBDT is part:
 - (b) provide for the capital ratio to be set at a specified minimum level for particular licensed NBDTs or classes of licensed NBDTs:
 - (c) prescribe the framework in accordance with which the capital ratio must be calculated:
 - (d) provide for variation (whether as to content or otherwise) of the framework to apply to particular licensed NBDTs or classes of licensed NBDTs.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 157S

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 33(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

34 Ensuring capital ratio included in trust deeds

- (1) Every licensed NBDT and trustee must comply with any requirement imposed by regulations made under section 33.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157T, 157ZR(h), 157ZW(1)(b), 157ZX

35 Licensed NBDTs to maintain required capital ratio

- (1) Every licensed NBDT must maintain any capital ratio that is required to be included in trust deeds by regulations made under section 33.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 157U, 157ZR(i)

*Restrictions on related party exposures***36 Regulations relating to exposure to related parties**

- (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 the purpose of imposing a requirement that licensed NBDTs and trustees ensure that trust deeds include a maximum limit on exposures to related parties.
- (2) Regulations made under this section may do any of the following:
 - (a) provide that the maximum limit on exposures to related parties is relative to—
 - (i) the capital of an individual licensed NBDT; or
 - (ii) the capital of the borrowing group of which a licensed NBDT is part:
 - (b) provide that the maximum limit on exposures to related parties applies in respect of exposures of individual licensed NBDTs or any borrowing group of which a licensed NBDT is part:
 - (c) require every licensed NBDT and trustee to ensure that trust deeds include a specified maximum limit on exposures to related parties:
 - (d) require every licensed NBDT and trustee to ensure that trust deeds include a maximum limit on exposures to related parties that is fixed by agreement between the licensed NBDT and trustee (*see* section 79 for provisions that apply if there is no agreement).
- (3) If subsection (2)(d) applies, the regulations must specify the framework (for example, covering matters as to the identification and measurement of credit exposures) in accordance with which licensed NBDTs and trustees must fix the maximum agreed limit.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 157V

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 36(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

37 Ensuring maximum limit on related party exposures included in trust deeds

- (1) Every licensed NBDT and trustee must comply with any requirement imposed by regulations made under section 36.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157X, 157ZR(j), 157ZW(1)(c), 157ZX

38 Licensed NBDT not to exceed maximum limit on related party exposures

- (1) A licensed NBDT must not exceed any maximum limit on exposures to related parties required by regulations made under section 36 to be included in the trust deed.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 157Y, 157ZR(k)

Liquidity requirements

39 Regulations relating to liquidity requirements

- (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 the purpose of imposing a requirement that licensed NBDTs and trustees must ensure that trust deeds include liquidity requirements.
- (2) Regulations made under this section may, in relation to the liquidity requirements to be included in trust deeds, prescribe 1 or more of the following:
 - (a) assets that qualify as liquid assets for the purposes of the regulations;
 - (b) minimum amounts of liquid assets relative to liabilities that must be maintained by licensed NBDTs;
 - (c) requirements concerning matching maturity of assets and liabilities;
 - (d) requirements in respect of a licensed NBDT that require the liquidity of the borrowing group of which it is part to be taken into account;
 - (e) other measures relating to liquidity management, including the management of stress situations.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 s 157Z

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

| | | |
|---------------------|--|-------------------------------|
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives <i>This note is not part of the Act.</i> | LA19 ss 115, 116 |

Section 39(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

40 Ensuring liquidity requirements included in trust deeds

- (1) Every licensed NBDT and trustee must comply with any requirement prescribed by regulations made under section 39.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157ZA, 157ZR(l), 157ZW(1)(d), 157ZX

41 Licensed NBDTs to comply with liquidity requirements

- (1) Every licensed NBDT must comply with the liquidity requirements required to be included in the trust deed by regulations made under section 39.
- (2) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 157ZB, 157ZR(m)

Subpart 3—Other obligations

Notifying Bank of suitability concerns

42 Directors' obligation on becoming aware of suitability concerns

- (1) As soon as a director of a licensed NBDT becomes aware that any director or senior officer of the NBDT raises, or may raise, any suitability concerns, the director must notify the Bank of that fact or possibility.
- (2) Notification under this section must be treated by the Bank as if it were a suitability notice that identifies that the person named in it raises suitability concerns, and subsections (1), (4), and (5) of section 16 apply.
- (3) After making inquiries, the Bank may either issue a notice of non-objection in relation to the person, or must advise the licensed NBDT that it does not intend to issue a notice of non-objection in relation to the person.
- (4) A director of a licensed NBDT commits an offence if he or she fails to notify the Bank, as soon as he or she becomes aware, or ought to be aware, that a director or senior officer of the NBDT raises suitability concerns, and is liable on conviction to a level 3 penalty.

Consent for changes of ownership

43 Bank's consent for change of ownership

- (1) A person must obtain the written consent of the Bank before giving effect to a transaction that will result, after completion of the transaction, in—
 - (a) the person increasing the person's level of influence over a licensed NBDT such that the person will—
 - (i) have the ability, directly or indirectly, to appoint 25% or more of the members of the governing body of the NBDT; or
 - (ii) have a direct or indirect qualifying interest in 20% or more of the voting securities issued or allotted by the NBDT; or
 - (b) in the case of a person who, with the consent of the Bank, already has at least the level of influence described in paragraph (a), an increase in the person's level of influence beyond the level permitted by the existing consent; or
 - (c) in the case of a person who, at the time the NBDT became licensed, had at least the level of influence over an NBDT described in paragraph (a), an increase in the person's level of influence beyond the level existing at that time.
- (2) The Bank may, in giving its consent,—
 - (a) specify the level of influence (in terms of the matters referred to in subsection (1)(a)) that a person may have or acquire over a licensed NBDT without the need for further consent; and
 - (b) impose any terms and conditions on the consent that the Bank thinks fit.
- (3) Nothing in this section invalidates any contract, or transfer of ownership, made in contravention of this section.
- (4) A person who fails to comply with subsection (1), or who fails to comply with the terms and conditions of any consent given under this section, commits an offence and is liable on conviction to a level 2 penalty.

Compare: 1989 No 157 ss 77A, 77B

Additional obligations of trustees to Bank

44 Bank may require trustee to attest to licensed NBDT's compliance

- (1) The Bank may require a trustee to attest to the Bank, at a time and in a manner specified by the Bank, as to whether it is satisfied that a licensed NBDT in relation to which it is a trustee is complying with this Act and the regulations.
- (2) If the Bank requires a trustee to attest under this section, the trustee must either—
 - (a) provide that attestation; or

- (b) if the trustee is not able to attest to the Bank as required, report the reason, including the details of any non-compliance or suspected non-compliance by the licensed NBDT.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157ZE, 157ZW(1)(e), 157ZX

45 Trustee to report to Bank on licensed NBDT non-compliance

- (1) Every trustee must, as soon as practicable, report to the Bank if it has reasonable grounds to believe that a licensed NBDT is failing, has failed, or is likely to fail, to comply in a material respect with this Act or the regulations.
- (2) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157ZF, 157ZW(1)(f), 157ZX(4)

46 Trustees to disclose certain information about licensed NBDTs to Bank

- (1) This section applies if a trustee, in the course of or in connection with the performance of its functions as trustee in relation to a licensed NBDT, becomes aware of information on the basis of which the trustee could reasonably form an opinion that—
 - (a) the NBDT is unable to pay its debts as they become due in the normal course of business; or
 - (b) the value of the NBDT's assets is less than the value of its liabilities, including contingent liabilities; or
 - (c) it is likely that—
 - (i) the NBDT will be unable to pay its debts as they become due in the normal course of business; or
 - (ii) the value of the NBDT's assets will be less than the value of its liabilities, including contingent liabilities; or
 - (d) the NBDT has breached, or is likely to breach, in a material respect,—
 - (i) the terms of a trust deed; or
 - (ii) the terms of any offer of debt securities to which a trust deed relates.
- (2) If this section applies, the trustee must, as soon as practicable, disclose to the Bank all information held by the trustee that is relevant to the matter referred to in subsection (1) and obtained in the course of, or in connection with, the performance of its functions as trustee.
- (3) A trustee that breaches this section commits an offence and is liable on conviction to a level 1 penalty.

Compare: 1989 No 157 ss 157ZG(1), (3), 157ZW(1)(g), 157ZX(4)

Part 3

Monitoring and enforcement

Provision of information to Bank

47 Bank may require information, etc, from licensed NBDT

- (1) The Bank may, by notice in writing to a licensed NBDT, require the NBDT to supply to the Bank any information, data, or forecasts about any of the following matters as they relate to the NBDT or its guaranteeing subsidiaries:
 - (a) corporate matters:
 - (b) financial matters:
 - (c) prudential matters:
 - (d) any other matters relating to the business, operation, or management of the NBDT or its guaranteeing subsidiaries.
- (2) The notice may require information, data, or forecasts relating to any business carried on by the NBDT or its guaranteeing subsidiaries, whether the business is carried on in New Zealand or elsewhere.
- (3) The notice may also require any or all of the information, data, or forecasts to—
 - (a) be in consolidated form; and
 - (b) be audited, or reviewed in a specified manner, by a person approved by the Bank; and
 - (c) relate to specified periods; and
 - (d) be supplied by a specified time, or within a specified period; and
 - (e) be provided in a specified form; and
 - (f) be provided to a specified place.
- (4) A licensed NBDT commits an offence if it fails to comply with a notice given under this section and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 93, 93B, 94

48 Bank may require information, etc, from associated persons

- (1) The Bank may, by notice in writing to an associated person of a licensed NBDT, require the associated person to supply to the Bank any information, data, or forecasts about any of the following matters as they relate to the associated person:
 - (a) corporate matters:
 - (b) financial matters:
 - (c) prudential matters:

- (d) any other matters relating to the business, operation, or management of the associated person.
- (2) The notice may require information, data, or forecasts relating to any business carried on by the associated person, whether the business is carried on in New Zealand or elsewhere.
- (3) Section 47(3) applies to any notice given under subsection (1).
- (4) An associated person commits an offence if it fails to comply with a notice given under this section and is liable on conviction to a level 3 penalty.

Compare: 1989 No 157 ss 93A, 93B

49 Bank may require reports for investigation purposes

- (1) For the purpose of investigating whether a licensed NBDT is complying with this Act or the regulations, the Bank may, by notice to the NBDT or any associated person, require the NBDT or associated person to supply the Bank with a report (which may comprise a series of reports), prepared by an approved person, on matters relating to the business, operation, or management of the NBDT or any associated person.
- (2) The NBDT or associated person must provide the approved person with access to its accounting and other records and must supply information relating to those records if the approved person requests the NBDT or associated person to do so for the purposes of the report.
- (3) The NBDT or associated person is liable for the cost of every report that it is required to supply to the Bank under this section.
- (4) In this section, **approved person** means a person approved or appointed by the Bank for the purposes of this section.
- (5) A licensed NBDT or an associated person commits an offence, and is liable on conviction to a level 3 penalty, if it—
 - (a) fails to supply a report to the Bank if required to do so under this section; or
 - (b) fails to provide access to its accounting and other records, or fails to provide information relating to those records, if requested to do so for the purposes of a report under this section.

Compare: 1989 No 157 ss 157ZI, 157ZS(a), (b); 2010 No 111 s 126(2)

50 Bank may require trustee to provide information about licensed NBDTs

- (1) If the Bank, by notice in writing to a trustee, requires the trustee to obtain information from a licensed NBDT relating to the business, operation, or management of the NBDT, the trustee—
 - (a) is, despite anything in any enactment, instrument, or rule of law, entitled to require the NBDT to supply the trustee with that information; and
 - (b) must require the NBDT to supply the information; and

- (c) must supply any information so provided to the Bank.
- (2) A trustee that fails to comply with subsection (1)(b) or (c) commits an offence and is liable on conviction to a level 1 penalty.
Compare: 1989 No 157 ss 157ZG(2), 157ZW(1)(g), 157ZX

Powers where offence suspected

51 Bank may require information if offence suspected

- (1) If the Bank has reasonable cause to believe that a licensed NBDT or an associated person has committed an offence under this Act, the Bank may, by notice in writing, do either or both of the following:
 - (a) require the NBDT or associated person to supply to the Bank the information, documents, or things specified in the notice, within the time specified in the notice;
 - (b) appoint a suitably qualified person to enter and search a place under a warrant issued under section 52.
- (2) A licensed NBDT or associated person that fails to comply with a notice given under subsection (1)(a) commits an offence and is liable on conviction to a level 3 penalty.
Compare: 1989 No 157 ss 157ZJ, 157ZK, 157ZS(c)

52 Power to enter and search

- (1) A person appointed under section 51(1)(b) may, for the purpose of investigating whether a person is committing or has committed an offence under this Act, enter and search any place if—
 - (a) the occupier of the place consents; or
 - (b) he or she obtains a warrant under this section.
- (2) An issuing officer (within the meaning of section 3(1) of the Search and Surveillance Act 2012) may issue a warrant to a person appointed under section 51(1)(b) in relation to a place if the issuing officer, on an application made by that person in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, is satisfied that there are reasonable grounds—
 - (a) to suspect that a person is committing or has committed an offence under this Act; and
 - (b) to believe that a search will find evidential material at the place.
- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.
Compare: 2010 No 111 s 132

*Provisions about information disclosed***53 Privileges where information required to be disclosed**

- (1) If a person could, in a criminal proceeding, assert a privilege under sections 54 to 57 of the Evidence Act 2006 in respect of any communication or information, the person is taken to have the same privilege for the purposes of—
 - (a) a request under section 49(2) to supply access to accounting and other records of a licensed NBDT or provide information relating to those records; and
 - (b) a notice under section 51(1)(a).
- (2) A person who has a privilege under this section has the right—
 - (a) to refuse to disclose a communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and
 - (b) to prevent the search of any such communication or information; and
 - (c) to require the return of such communication or information if it is seized by a person exercising a power of search pending determination of the claim to privilege.
- (3) If a person refuses to disclose a communication or information on the ground that it is privileged under this section, the Bank may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her.
- (4) A District Court Judge may, on the application of the Bank, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding.
- (5) Subsection (6) applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006.
- (6) The application by subsection (1) of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—
 - (a) the issue of, or the obligation to comply with, a notice under section 51(1)(a) in respect of a document to which this subsection applies; or
 - (b) the admissibility, in a criminal proceeding under this Act, of any evidence that relates to the contents of a document obtained as a result of a notice under section 51(1)(a).
- (7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.

- (8) Nothing in this section affects the application of section 60 of the Evidence Act 2006.

Compare: 1989 No 157 s 157ZN

Section 53(3): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 53(4): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

54 Confidentiality of information

- (1) This section applies to—
- (a) information supplied or disclosed to, or obtained by,—
 - (i) the Bank, under or for the purposes of, or in connection with, the exercise of powers conferred by this Act; and
 - (ii) any person appointed by the Bank under section 51(1)(b) to enter and search a place under warrant:
 - (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, any employee of the Bank, and any person appointed by the Bank under section 51(1)(b) may publish or disclose information to which this section applies only—
- (a) with the consent of the person to whom the information relates; or
 - (b) in statistical or summary form, arranged in a manner that prevents any information published or disclosed from being identified by any person as relating to a particular person; or
 - (c) to the extent that the information is available to the public under any Act (other than the Official Information Act 1982) or in a public document; or
 - (d) 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
 - (da) under subpart 3 of Part 6 of the Reserve Bank of New Zealand Act 2021 (which relates to information sharing); or
 - (e) in connection with any proceedings for an offence against this Act; or
 - (f) *[Repealed]*
 - (g) to a trustee of the NBDT to whom the information relates; or
 - (h) to any person who the Bank is satisfied has a proper interest in receiving the information.

- (3) A person to whom information to which this section applies is published or disclosed under subsection (2)(d) must not publish, disclose, or use the information except—
- (a) for the purposes of, or in connection with, the performance or exercise of any function, power, or duty referred to in that paragraph; or
 - (b) in accordance with any conditions that may be specified by the Bank.
- (4) Information to which this section applies must not be published or disclosed under subsection (2)(g) or (h) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information published or disclosed.
- (5) A person to whom information to which this section applies is disclosed under subsection (2)(g) or (h) must not publish, disclose, or use the information unless the publication, disclosure, or use is—
- (a) authorised by the Bank; or
 - (b) necessary or desirable in connection with the exercise of any function or power conferred by any enactment.
- (6) A person who breaches this section commits an offence and is liable on conviction to a level 2 penalty.

Compare: 1989 No 157 ss 105(2), 157ZO, 157ZP

Section 54(2)(d): replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 54(2)(da): inserted, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 54(2)(f): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 54(3)(a): replaced, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 54(5): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

55 Application of Official Information Act 1982

Nothing in the Official Information Act 1982 applies to information to which section 54 applies, whether or not the information has been published or disclosed to any person pursuant to that section.

Compare: 1989 No 157 ss 105(8), 157ZQ

Power to give directions

56 Bank directions to licensed NBDTs and associated persons

- (1) The Bank may give a licensed NBDT or an associated person a direction under this section if the Bank has reasonable grounds to believe any of the following:
- (a) that the NBDT or any associated person is unable, or likely to be unable, to pay its debts as they become due in the normal course of business:

- (b) that the NBDT or any associated person, or any director or senior officer of the NBDT or any associated person, is failing, has failed, or is likely to fail, to comply with—
 - (i) this Act or the regulations; or
 - (ia) the Financial Markets Conduct Act 2013 or regulations made under that Act; or
 - (ii) the Securities Act 1978 or regulations made under that Act; or
 - (iii) any condition of the NBDT’s licence:
 - (c) that the circumstances of the NBDT or any associated person, or the manner in which the affairs of the NBDT or associated person are being conducted, are prejudicial to the solvency of the NBDT or its ability to comply with the things listed in paragraph (b).
- (2) A direction to an NBDT under this section may require the NBDT to do any of the following:
- (a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the NBDT or any associated person, or about the methods of resolving any financial or other difficulties facing the NBDT or any associated person:
 - (b) take any specified action to address any circumstances of financial or other difficulties of the NBDT or any associated person:
 - (c) take, or refrain from taking, any specified action to address a failure, or potential failure, by the NBDT or any associated person to comply with the things listed in subsection (1)(b):
 - (d) ensure that any senior officer or other employee of the NBDT ceases to take part in the management or conduct of the NBDT’s business, except with the permission of the Bank and so far as that permission extends:
 - (e) suspend or cease carrying on any part of its business:
 - (f) carry on its business, or any part of its business, in accordance with the direction:
 - (g) replace its auditor with an auditor approved by the Bank (in which case the NBDT has the power to give effect to the direction despite any enactment, rule of law, or the governing document of the NBDT).
- (3) A direction to an associated person under this section may require the associated person to do any of the following:
- (a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the NBDT or the associated person, or about the methods of resolving any financial or other difficulties facing the NBDT or the associated person:
 - (b) take any specified action to address any circumstances of financial or other difficulties of the NBDT or the associated person:

- (c) take, or refrain from taking, any specified action to address a failure, or potential failure, by the NBDT or the associated person to comply with the things listed in subsection (1)(b):
- (d) ensure that any senior officer or other employee of the 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) suspend or cease carrying on any part of its business:
- (f) carry on its business, or any part of its business, in accordance with the direction:
- (g) replace its auditor with an auditor approved by the Bank (in which case the associated person has the power to give effect to the direction despite any enactment, rule of law, or the governing document of the associated person).

Compare: 1989 No 157 ss 113, 113A; 2010 No 111 ss 143–146

Section 56(1)(b)(ia): inserted, on 1 December 2014, by section 100.

57 Bank directions to trustees

- (1) The Bank may give a direction under this section to a trustee of a licensed NBDT if it has reasonable grounds to believe that the NBDT or the trustee is failing, has failed, or is likely to fail to comply with this Act or the regulations.
- (2) A direction under this section may require a trustee to do any of the following:
 - (a) consult with the Bank, at the times and in the manner specified by the Bank, about the circumstances of the NBDT or trustee and the actions or proposed actions of the NBDT or trustee:
 - (b) make changes to a trust deed:
 - (c) arrange for a review and report on the NBDT's risk management programme.

58 Miscellaneous matters relating to directions

- (1) A direction given under section 56 or 57 must state the grounds on which it is given and the reasons for the direction.
- (2) A direction to a licensed NBDT, associated person, or trustee is taken to have been given on delivery to the head office, registered office, principal place of business in New Zealand, or address for service of the NBDT, associated person, or trustee (as the case may be).

Compare: 1989 No 157 s 116(1); 2010 No 111 s 147

59 Obligation to comply with directions

- (1) Every person to whom a direction is given under section 56 or 57 must comply with the direction.

- (2) A person (other than a trustee) commits an offence, and is liable on conviction to a level 4 penalty, if the person—
 - (a) fails to comply with a direction given under section 56; or
 - (b) obstructs, hinders, or prevents an NBDT, associated person, or trustee from giving effect to a direction under this subpart.
- (3) A trustee commits an offence, and is liable on conviction to a level 1 penalty, if the trustee—
 - (a) fails to comply with a direction given under section 57; or
 - (b) obstructs, hinders, or prevents an NBDT, associated person, or trustee from giving effect to a direction under this Part.

Compare: 1989 No 157 s 114; 2010 No 111 s 148

Power to remove or appoint directors

60 Bank's powers to remove or appoint directors of licensed NBDTs and associated persons

- (1) The Bank may remove a director of a licensed NBDT, by notice in writing to the director, if—
 - (a) any of the following apply and, in the opinion of the Bank, it is necessary to remove or replace the director:
 - (i) the NBDT or any associated person is unable, or likely to be unable, to pay its debts as they become due in the normal course of business;
 - (ii) the director has failed, or is failing, or is likely to fail, to comply with this Act or the regulations;
 - (iii) the circumstances of the NBDT or any associated person, or the manner in which its affairs are being conducted, are prejudicial to the solvency of the NBDT or its ability to comply with this Act, the regulations, the Financial Markets Conduct Act 2013, regulations made under that Act, the Securities Act 1978, or regulations made under that Act; or
 - (b) a suitability notice given in respect of the director was false or misleading in a material respect; or
 - (c) the director raises suitability concerns and the Bank has not issued a notice of non-objection for the person in respect of that position; or
 - (d) the information on which the Bank issued a notice of non-objection in relation to the director was false or misleading in a material respect; or
 - (e) since the NBDT was granted a licence, or since the director was appointed, any 1 or more of the suitability concerns applies to the director and the Bank does not propose to issue a notice of non-objection in relation to the director.

- (2) The Bank may, by notice to a person, appoint the person as a director of a licensed NBDT if—
- (a) the Bank has exercised, or is exercising, the power in subsection (1) to remove a director and it is necessary to appoint a person to replace the removed director; or
 - (b) in the opinion of the Bank, it is necessary to appoint a person as an additional director because—
 - (i) the NBDT is failing or has failed to comply with this Act or the regulations; or
 - (ii) either of the grounds in subsection (1)(a)(i) or (iii) applies.
- (3) The Bank may remove a director of an associated person of a licensed NBDT, by notice in writing to the director, if any of the following apply and it is necessary, in the opinion of the Bank, to remove or replace the director:
- (a) the NBDT or associated person is unable, or likely to be unable, to pay its debts as they become due in the normal course of business;
 - (b) the director has failed, or is failing, or is likely to fail, to comply with this Act or the regulations;
 - (c) the circumstances of the associated person, or the manner in which its affairs are being conducted, are prejudicial to the solvency of the NBDT or its ability to comply with this Act, the regulations, the Financial Markets Conduct Act 2013, regulations made under that Act, the Securities Act 1978, or regulations made under that Act.
- (4) The Bank may, by notice to a person, appoint the person as an additional director of an associated person if—
- (a) the Bank has exercised, or is exercising, the power in subsection (3) to remove a director and it is necessary to appoint a person to replace the removed director; or
 - (b) in the opinion of the Bank, it is necessary to appoint a person as an additional director because—
 - (i) the associated person is failing or has failed to comply with this Act or the regulations; or
 - (ii) either of the grounds in subsection (3)(a) or (c) applies.
- (5) Subsections (1) to (4) do not apply in respect of a director of an overseas person.
- (6) This section has effect despite any enactment, rule of law, or the terms of the governing document of the NBDT or associated person.

Compare: 1989 No 157 s 113B; 2010 No 111 s 149(5)

Section 60(1)(a)(iii): amended, on 1 December 2014, by section 101.

Section 60(3)(c): amended, on 1 December 2014, by section 101.

61 Procedures for removal and appointment of directors

- (1) The Bank must not exercise the power in section 60(1) or (3) to remove a director unless—
 - (a) the Bank has given notice in writing of the Bank’s intention to exercise the power to—
 - (i) the director who is to be removed; and
 - (ii) the licensed NBDT or associated person of which the person is a director; and
 - (iii) if a director of a licensed NBDT is being removed, the trustee of the NBDT; and
 - (b) the notice sets out the reasons for the proposed action; and
 - (c) the director and the relevant NBDT or associated person have a reasonable opportunity to make submissions to the Bank; and
 - (d) the Bank has regard to those submissions.
- (2) The Bank must not exercise the power in section 60(2) or (4) to appoint a director unless—
 - (a) the Bank has given notice in writing of the Bank’s intention to the licensed NBDT or associated person to whom the director is to be appointed; and
 - (b) the notice sets out the reasons for the proposed action; and
 - (c) the NBDT or associated person has a reasonable opportunity to make submissions to the Bank; and
 - (d) the Bank has regard to those submissions; and
 - (e) the person whom the Bank proposes to appoint agrees to the appointment.
- (3) On exercising a power under section 60 to remove or appoint a director, the Bank must give written notice of the exercise of the power to,—
 - (a) in the case of a director of a licensed NBDT, the NBDT and the trustee; and
 - (b) in the case of a director of an associated person, the associated person and the licensed NBDT; and
 - (c) the Registrar of Companies or, in the case of a non-company NBDT or associated person whose director is being removed or appointed, whichever other registrar (if any) is appropriate.
- (4) A notice given under subsection (3)(c) with respect to the appointment of a director is sufficient compliance with section 159 of the Companies Act 1993 (or other equivalent provision) as long as the notice is accompanied by the

form of consent and certificate required under section 152 of that Act (or other equivalent required documentation).

Compare: 1989 No 157 s 113B

Appeals relating to directors and senior officers

62 Appeal against Bank decisions on suitability

- (1) Any of the following may appeal to the High Court against any decision of the Bank concerning the person's suitability to be a director or senior officer of an NBDT:
 - (a) a director or senior officer of a licensed NBDT;
 - (b) a former director or senior officer of a licensed NBDT;
 - (c) a person who was proposed to be a director or senior officer of a licensed NBDT.
- (2) An appeal under this section is by way of rehearing.
- (3) A decision against which an appeal is lodged continues in force pending the determination of the appeal unless the High Court orders otherwise.

Compare: 2010 No 111 s 42

63 Appeal to Court of Appeal on question of law

- (1) Any party to an appeal under section 62 may, with the leave of the High Court (or, if the High Court refuses leave, with the leave of the Court of Appeal) appeal to the Court of Appeal against the determination on a question of law; and section 56 of the Senior Courts Act 2016 applies to any such appeal.
- (2) In determining whether to grant leave to appeal, the Court of Appeal must have regard to whether the question of law involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.
- (3) The Court of Appeal, in granting leave, may impose the conditions that it thinks fit, whether as to costs or otherwise.
- (4) The decision of the Court of Appeal on any application for leave to appeal, or on an appeal under this section, is final.

Compare: 2010 No 111 s 43

Section 63(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Offences

64 Definitions of levels of penalties

- (1) A **level 4 penalty** for conviction for an offence against this Act is,—
 - (a) in the case of an individual, imprisonment for a term not exceeding 18 months, a fine not exceeding \$200,000, or both; and

- (b) in any other case, a fine not exceeding \$2 million.
- (2) A **level 3 penalty** for conviction for an offence against this Act is,—
 - (a) in the case of an individual, imprisonment for a term not exceeding 12 months, a fine not exceeding \$100,000, or both; and
 - (b) in any other case, a fine not exceeding \$1 million.
- (3) A **level 2 penalty** for conviction for an offence against this Act is,—
 - (a) in the case of an individual, imprisonment for a term not exceeding 3 months, a fine not exceeding \$50,000, or both; and
 - (b) in any other case, a fine not exceeding \$500,000.
- (4) A **level 1 penalty** for conviction for an offence against this Act is a fine not exceeding \$200,000.

65 General offences

A licensed NBDT, associated person, or trustee commits an offence, and is liable on conviction to a level 3 penalty, if it—

- (a) makes any statement or application, or supplies any document or thing, to the Bank knowing that it is false or misleading in a material respect; or
- (b) without reasonable excuse, obstructs or hinders an authorised person in the execution of any powers conferred on the person by or under this Act or the regulations.

Compare: 1989 No 157 s 157ZS(d)–(h)

66 Offence to disclose giving of direction or notice

- (1) Every person commits an offence, and is liable on conviction to a level 3 penalty, if the person discloses that the Bank has given a direction under section 56 or 57, or has issued a notice under section 60, requiring the removal or appointment of a director.
- (2) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction has been given, or a notice has been issued, if the disclosure or publication is made—
 - (a) to any director, senior officer, or professional or financial adviser of the NBDT or to an associated person or trustee of an NBDT to which the direction or notice relates; or
 - (b) with the written consent of the Bank; 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) Nothing in subsection (1) applies to the disclosure or publication of the fact that a direction has been given requiring the actions set out in section 56(2)(d) for the purpose of giving effect to that direction.

Compare: 1989 No 157 s 115; 2010 No 111 s 150

67 Defence to charge under Act

- (1) In any prosecution of a licensed NBDT, associated person, or trustee or former licensed NBDT, associated person, or trustee (the **defendant**) for an offence under this Act, it is a defence if the defendant proves that—
- (a) the contravention was due to the act or omission of another person, or some other cause beyond the defendant's control; and
 - (b) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1)(a), **another person** does not include a director, employee, or agent of the defendant.
- (3) A defendant is not, without the leave of the court, entitled as part of a defence provided by this section to rely on any of the matters specified in subsection (1)(a) unless it has, not later than 7 working days before the date on which the hearing of the proceedings commences, served on the prosecution a notice in writing identifying the act, omission, or cause relied on by the defendant.

Compare: 1989 No 157 s 157ZT

68 Liability of directors for offences of NBDTs and associated persons

- (1) If an NBDT or associated person commits an offence under this Act, each director of the NBDT or associated person commits the same offence, and is liable to the penalty applicable to an individual for that offence, if it is proved—
- (a) that the act that constituted the offence took place with the authority, permission, or consent of the director; or
 - (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 reasonable steps to prevent or stop it.
- (2) A director of an NBDT or of an associated person may be convicted of an offence as a result of the operation of this section even though the NBDT or associated person has not been charged with that offence.

69 Limitation period

Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, a charging document in respect of an offence against this Act may be filed at any time within 6 years after the date on which the offence was committed.

Part 4 Miscellaneous provisions

Exemptions

70 Exemptions from Act and regulations

- (1) The Bank may exempt any licensed NBDT, class of licensed NBDTs, or trustee from compliance with any provision of—
 - (a) this Act (except the requirement to be licensed); or
 - (b) the regulations.
- (2) The Bank must not grant an exemption under this section unless it is satisfied that—
 - (a) the exemption will be consistent with the maintenance of a sound and efficient financial system; and
 - (b) compliance with the relevant provision or provisions would, in the circumstances, require the licensed NBDT, class of licensed NBDTs, or trustee to comply with requirements that are unduly onerous or burdensome; and
 - (c) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) An exemption may be granted on any terms and conditions that the Bank thinks fit, including terms and conditions relating to the following:
 - (a) risk management:
 - (b) governance:
 - (c) disclosures:
 - (d) minimum capital requirements:
 - (e) exposures to related parties:
 - (f) liquidity.

(4) *[Repealed]*

Compare: 1978 No 103 ss 70B–70D; 1989 No 157 s 157G

Section 70(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

71 Status and publication of exemptions

- (1) Every exemption granted under section 70 must—
 - (a) state the date on which it comes into force, which must be a date after the date on which the exemption is granted; and
 - (b) include a statement of the Bank’s reasons for granting the exemption (including why the exemption is appropriate).

- (2) An exemption under section 70 is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (3) *[Repealed]*
- (4) *[Repealed]*

Compare: 1978 No 103 s 70C

Legislation Act 2019 requirements for secondary legislation referred to in subsection (2) that applies to a class of licensed NBDTs

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Legislation Act 2019 requirements for any other secondary legislation referred to in subsection (2)

| | | |
|---------------------|--|--|
| Publication | The maker must: <ul style="list-style-type: none"> • notify it in the <i>Gazette</i> • publish it on their website • make it available in printed form on request by members of the public <p>The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019</p> | LA19 ss 73, 74(1)(a), Sch 1 cl 14 LA19 ss 74(2), 75 |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 71(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 71(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 71(4): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

72 Effect of exemption

A person does not breach a requirement of this Act if—

- (a) an exemption from the requirement applies to that person; and
- (b) the person complies with the terms and conditions of the exemption.

Compare: 1989 No 157 s 157H

Regulations

73 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) declaring a person or class of persons to be a related party:
 - (b) declaring a class of persons to be, or not to be, senior officers:
 - (c) declaring any person or class of persons (other than a person referred to in section 5(2)(a) to (c)) to be an NBDT for the purposes of this Act, or declaring that, in certain specified circumstances, such a person or class of persons is an NBDT for the purposes of this Act:
 - (d) declaring any person or class of persons not to be an NBDT for the purposes of this Act, or declaring that, in certain specified circumstances, any person or class of persons is not an NBDT for the purposes of this Act:
 - (e) declaring certain securities to be debt securities for the purpose of this Act:
 - (f) prescribing the matters, circumstances, or conditions that are suitability concerns:
 - (g) *[Repealed]*
 - (h) prescribing additional matters to which the Bank must have regard in determining an application for a licence:
 - (i) prescribing additional matters to which the conditions on licences may relate:
 - (j) prescribing grounds, additional to those in section 21, on which the Bank may cancel a licence:
 - (k) prescribing information to be included in the register under section 85(3)(c):
 - (l) providing for any other matter contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) In considering whether to advise and recommend the making of regulations under subsection (1)(c) or (d), the Minister and the Bank must have regard to—
 - (a) the nature of the business activities carried on by the person or class of persons and the extent to which those activities—
 - (i) are similar in substance to the activities of an NBDT; or
 - (ii) involve activities as an NBDT; and
 - (b) the public interest; and
 - (c) any other matters the Minister or the Bank considers relevant.

- (3) The Bank must not recommend the making of regulations under subsection (1)(e), declaring certain securities to be debt securities, unless it is satisfied that the securities are similar in substance to debt securities.
- (4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1989 No 157 ss 157B(2), 157C(5), (6)

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114, Sch 1 cl 32(1)(a) |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

Section 73(1)(g): repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Section 73(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

74 Extension of regulation-making powers relating to prudential obligations

Regulations made under section 24, 30, 33, 36, or 39 may—

- (a) prescribe clauses relating to all or any of the matters referred to in those sections that are deemed to be contained in, or adopted by, trust deeds; and
- (b) prescribe requirements or clauses that apply to all licensed NBDTs; and
- (c) prescribe different requirements or clauses for different classes of licensed NBDTs; and
- (d) prescribe different requirements or clauses for particular licensed NBDTs.

Compare: 1989 No 157 s 157ZY

75 Material incorporated by reference in regulations

- (1) Any regulations made under this Act may incorporate material by reference, being material that is a framework, standard, specification, or requirement that is published by or on behalf of any body or person in any country.
- (2) The material may be incorporated—
 - (a) in whole or in part; and
 - (b) with any modifications, additions, or variations specified in the regulations.
- (3) Schedule 1 applies to any material incorporated by reference in regulations.

Compare: 1989 No 157 ss 81AA, 157W

76 Bank to consult before recommending regulations

- (1) The Bank must consult with the following before making a recommendation for the making of any regulations under this Act:
 - (a) the Financial Markets Authority; and
 - (b) if reasonably practicable, other persons, or the representatives of those persons, who the Bank considers will be substantially affected by the regulations made in accordance with the recommendation.
- (2) Failure to comply with subsection (1) does not affect the validity of regulations.

Compare: 1989 No 157 s 157E

Trustees and trust deeds

77 Protection of trustees

- (1) No civil, criminal, or disciplinary proceedings lie against a trustee arising from the disclosure in good faith of information to the Bank under any of sections 44, 45, 46, 50, and 57.
- (2) No person may terminate the appointment of a trustee by reason of the trustee disclosing information to the Bank in good faith under any of sections 44, 45, 46, 50, and 57.
- (3) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of a trustee, may make an order against, or do any act in relation to, that person in respect of the fact of that disclosure.

Compare: 1989 No 157 s 157ZH

78 Amendments to trust deeds treated as authorised

- (1) If this Act or the regulations, or the Bank acting under this Act or the regulations, requires a licensed NBDT or a trustee, or both a licensed NBDT and a trustee, to ensure that a matter is included in or excluded from a trust deed, an amendment to a trust deed in compliance with that requirement—
 - (a) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; and
 - (b) applies despite any defect in the form or mode of execution of the amendment.
- (2) Subsection (1) applies despite there being no power of variation in the trust deed, and despite anything to the contrary in the trust deed or any enactment, rule of law, or agreement.

Compare: 1989 No 157 s 157ZC

79 Trustees may execute amendment to trust deeds

- (1) This section applies if—

- (a) this Act or the regulations require a trustee, or both a licensed NBDT and a trustee, to ensure that a matter is included in or excluded from a trust deed; and
 - (b) it is necessary to amend the trust deed within a certain time in order to comply with that requirement; and
 - (c) the trustee has made reasonable efforts, in good faith, to negotiate with the NBDT for the purpose of agreeing to an amendment to the trust deed to ensure compliance with the requirement; and
 - (d) the trustee has not, within a reasonable period before the expiry of the time allowed for amending the trust deed, been able to reach an agreement with the NBDT about the amendment to be made to the trust deed.
- (2) If this section applies, the trustee may execute a deed amending the trust deed without the consent or agreement of the NBDT or any other person in order to ensure that the trust deed complies with this Act and the regulations.
- (3) The deed amending the trust deed—
- (a) has effect despite there being no consent or agreement of the NBDT or any other person; and
 - (b) must be treated for all purposes as if it were authorised to be made and were made in accordance with the provisions of the trust deed before the amendment was made; and
 - (c) applies despite any defect in its form or mode of execution.
- (4) Subsection (3) applies despite there being no power of variation in the trust deed, and despite anything to the contrary in the trust deed or any enactment, rule of law, or agreement.

Compare: 1989 No 157 s 157ZD

Protection from liability and indemnity

[Repealed]

Heading: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

80 Protection from liability for Bank, etc

[Repealed]

Section 80: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

81 Indemnity for Bank, etc

[Repealed]

Section 81: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Other miscellaneous provisions

82 Notice and service of documents

- (1) Unless this Act provides otherwise, if a provision of this Act requires or authorises a notice, document, or notification to be given to a person, the notice, document, or notification must be in writing and must,—
 - (a) if given to an individual, be given—
 - (i) by delivering it personally or by an agent 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 fax or email to the person's fax number or email address provided by the person for the purpose; or
 - (b) if given to 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; or
 - (c) if given to an overseas company, be served in a manner provided for in section 389(1) or 390 of the Companies Act 1993; or
 - (d) if given to 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.
- (2) In the absence of proof to the contrary, a notice, document, or notification given to an individual must be treated,—
 - (a) in the case of delivery by post under subsection (1)(a)(ii), as having been given or provided to the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:
 - (b) in the case of delivery by fax or email under subsection (1)(a)(iii), as having been given or provided to the person on the second working day after the day on which it is sent.
- (3) Section 392 of the Companies Act 1993 applies for the purposes of subsection (1)(b) to (d).
- (4) If a person is absent from New Zealand, a notice, 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.
- (5) If the person has died, the notice, document, or notification may be given, in accordance with subsection (1), to his or her personal representative.

Compare: 2010 No 111 s 229

83 Power to amend, revoke, or replace notices, etc

- (1) The Bank may amend, revoke, or replace any notice, direction, or consent that it is entitled to give under this Act or the regulations.

- (2) Any requirement relating to the giving of a notice, direction, or consent applies also to the amendment, revocation, or replacement of the notice, direction, or consent.

84 Obligations under this Act not limited

An obligation imposed on a person by any other Act or instrument does not prevent or excuse the person from complying with any provision of this Act or the regulations or with any direction, notice, or condition given or imposed under that provision.

Compare: 1989 No 157 s 172

85 Register of licensed NBDTs

- (1) The Bank must keep a public register of licensed NBDTs.
- (2) The Bank must determine the form of the register and may amend the form from time to time as it considers necessary.
- (3) The register must include—
- (a) the name of each licensed NBDT; and
 - (b) the current rating of creditworthiness of each licensed NBDT or its borrowing group under section 23 (unless the NBDT is not required to have such a rating); and
 - (c) any other prescribed information.
- (4) 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 69

86 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.

- (3) 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 subsection (2).
- (4) If, after conducting the review, the Bank considers that the person should no longer be an approved rating agency, it may revoke the approval.
- (5) On request by an approved rating agency, the Bank may revoke its approval, without the need for a prior review.
- (6) The Bank must publish and keep up to date a list of approved rating agencies on an Internet site, maintained by or on behalf of the Bank, that is publicly accessible at all reasonable times.

Compare: 1989 No 157 s 157J

Transitional provisions

87 Transitional arrangements for pre-existing NBDTs

- (1) This section applies to every NBDT that—
 - (a) was a deposit taker within the meaning of section 157C of the Reserve Bank of New Zealand Act 1989 immediately before this section comes into force; and
 - (b) is an NBDT within the meaning of this Act on the date on which this section comes into force.
- (2) In this section, the **transition period** means, in relation to an NBDT, the period between the date on which this section comes into force and the earliest of the following:
 - (a) the date that is 1 year after the date on which this section comes into force;
 - (b) the date on which the NBDT becomes a licensed NBDT;
 - (c) the date on which the NBDT ceases to be an NBDT.
- (3) During the transition period, the following apply to every NBDT to whom this section applies as if the NBDT were a licensed NBDT:
 - (a) this Act, except section 11 (licensing requirements), section 42 (directors' obligation to notify suitability concerns), section 43 (consent for change of ownership), and section 60 (Bank's power to remove and appoint directors):
 - (b) the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010:
 - (c) the Deposit Takers (Liquidity Requirements) Regulations 2010.

88 Exemptions continue in force

- (1) An exemption granted under section 157G of the Reserve Bank of New Zealand Act 1989 that is in force immediately before this section comes into force—
 - (a) continues in force as if it were granted under section 70 of this Act; and
 - (b) may be amended or revoked as if it were granted under that section, and section 71 applies to the amendment or revocation accordingly.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) A reference in an exemption granted under section 157G of the Reserve Bank of New Zealand Act 1989 to any provision in Part 5D of the Reserve Bank of New Zealand Act 1989 (ie, to any of sections 157A to 157ZZ of that Act) must be taken as a reference to a provision in this Act that corresponds (with or without modification) to that provision.

Compare: 2011 No 6 s 54

Section 88(1)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 88(2): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 88(3): repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

89 Transitional references in Reserve Bank of New Zealand Act 1989

[Repealed]

Section 89: repealed, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

*FMA to consult with Bank before recommending statutory management of
NBDT*

90 Amendment to Corporations (Investigation and Management) Act 1989

- (1) This section amends the Corporations (Investigation and Management) Act 1989.
- (2) Section 8(3) is amended by inserting “, non-bank deposit taker licensed under the Non-bank Deposit Takers Act 2013,” after “licensed insurer”.

*Consequential and other amendments to Financial Service Providers
(Registration and Dispute Resolution) Act 2008*

91 Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

- (1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

- (2) Section 5 is amended by repealing paragraph (b) and substituting the following paragraph:
- (b) being a licensed NBDT, as defined in the Non-bank Deposit Takers Act 2013:
- (3) Section 15(2) is amended by adding “, unless otherwise agreed by the relevant licensing authority and the Registrar”.
- (4) Schedule 2 is amended by adding the following item to the table:

| | | |
|-----------------------------|----------------|----------------------------------|
| Reserve Bank of New Zealand | Licensed NBDTs | Non-bank Deposit Takers Act 2013 |
|-----------------------------|----------------|----------------------------------|

Consequential amendments and revocations

92 Consequential amendments in Schedules 2 and 3

- (1) The Reserve Bank of New Zealand Act 1989 is consequentially amended in the manner set out in Schedule 2.
- (2) Other enactments are consequentially amended in the manner set out in Schedule 3.

93 Consequential revocation of regulations

The following regulations are revoked:

- (a) Deposit Takers (In Receivership or Liquidation) Exemption Notice 2009 (SR 2009/299):
- (b) Deposit Takers (Persons Declared Not to be Deposit Takers) Regulations 2011 (SR 2011/359).

Amendments to this Act after commencement of relevant parts of Financial Markets Conduct Act 2013

94 Principal Act amended

Sections 95 to 101 amend this Act.

95 Interpretation

- (1) Paragraph (a) of the definition of **debt security** in section 4(1) is amended by omitting “section 2(1) of the Securities Act 1978” and substituting “section 8 of the Financial Markets Conduct Act 2013”.
- (2) The definitions of **trust deed** and **trustee** in section 4(1) are repealed.
- (3) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

NBDT regulated offer—

- (a) means a regulated offer within the meaning of section 41 of the Financial Markets Conduct Act 2013; and

- (b) includes an offer of debt securities that would be a regulated offer within the meaning of that section if clause 3(2)(b) and (3)(a) of Schedule 1 of that Act were not in force; and
- (c) includes an offer of debt securities to the public in New Zealand to which the Securities Act 1978 applied before its repeal or to which that Act applies or applied under Schedule 4 of the Financial Markets Conduct Act 2013

trust deed, in relation to an NBDT, means a trust deed that is required, by or under any of the following, in relation to debt securities (as defined in this Act) offered by or on behalf of the NBDT:

- (a) subpart 1 of Part 4 of the Financial Markets Conduct Act 2013 or an exemption granted under that Act:
- (b) a condition under section 19(1)(fa):
- (c) the Securities Act 1978 or an exemption granted under that Act

trustee, in relation to an NBDT,—

- (a) means a licensed supervisor (within the meaning of the Financial Markets Conduct Act 2013) who is designated or appointed, by or under any of the following, as the trustee for any debt security offered by or on behalf of the NBDT:
 - (i) a trust deed:
 - (ii) an exemption granted under the Financial Markets Conduct Act 2013:
 - (iii) the Financial Markets Supervisors Act 2011:
 - (iv) a condition under section 19(1)(fa):
- (b) includes a trustee (as defined in the Securities Act 1978) that is required, by or under that Act or an exemption granted under it, in relation to any debt security offered by or on behalf of the NBDT

96 NBDT defined

- (1) Section 5(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
 - (i) makes an NBDT regulated offer of debt securities; and
- (2) Section 5(1)(c) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
 - (ii) has debt securities that remain unpaid and that were offered under an NBDT regulated offer:
- (3) Section 5(2)(d) is amended by omitting “to the public in New Zealand” and substituting “under an NBDT regulated offer”.

97 Determining applications for licence

Section 14(2)(b) is amended by inserting “the Financial Markets Conduct Act 2013,” after “requirements of”.

98 Kinds of licence conditions and their effect

Section 19(1) is amended by inserting the following paragraph after paragraph (f):

(fa) in a case where subpart 1 of Part 4 of the Financial Markets Conduct Act 2013 would not otherwise apply in relation to debt securities issued or to be issued by an NBDT, requirements relating to compliance with that subpart (in whole or in part and with any modifications or variations specified in the conditions), including requirements to have a trustee and a trust deed for the debt securities:

99 Grounds for cancelling licence

Section 21(b) is amended by inserting “the Financial Markets Conduct Act 2013,” after “relevant provisions of”.

100 Bank directions to licensed NBDTs and associated persons

Section 56(1)(b) is amended by inserting the following subparagraph after subparagraph (i):

(ia) the Financial Markets Conduct Act 2013 or regulations made under that Act; or

101 Bank’s powers to remove or appoint directors of licensed NBDTs and associated persons

Section 60(1)(a)(iii) and (3)(c) are amended by inserting “the Financial Markets Conduct Act 2013, regulations made under that Act,” after “the regulations,”.

Other amendments relating to financial markets legislation

102 Amendments relating to financial markets legislation

The enactments referred to in Schedule 4 are amended in the manner set out in that schedule.

Schedule 1

Material incorporated by reference

s 75

1 Effect of material incorporated by reference

- (1) This schedule applies to material incorporated by reference in regulations made under this Act.
- (2) Material incorporated by reference in regulations has legal effect as part of the regulations.

2 Relevant version of material incorporated by reference

Where material is incorporated by reference in regulations, the version of the material incorporated that has legal effect as part of the regulations (the **relevant version**) at any particular time (the **relevant time**) is,—

- (a) if the regulations do not specify a particular version of the material, the version of the material that is current at the relevant time; and
- (b) if the regulations specify a particular version of the material, that specified version, regardless of whether that version has been amended or replaced since the regulations were made.

3 Effect of expiry or revocation of material incorporated by reference

If material incorporated by reference in regulations expires or is revoked,—

- (a) if the regulations do not specify a particular version of the material, the material ceases to have legal effect as part of the regulations from the date of its expiry or revocation; and
- (b) if the regulations specify a particular version of the material, that version of the material continues to have legal effect as part of the regulations, unless or until regulations provide otherwise.

4 Application of clauses 5 to 7 to New Zealand material

- (1) In this clause, **New Zealand material** means any material incorporated by reference—
 - (a) that is material made or issued in New Zealand, under the authority of an Act; and
 - (b) the relevant version of which is available at all reasonable times—
 - (i) on a publicly available Internet site (unless it is unavailable for copyright reasons); and
 - (ii) in printed form, either free or at no more than a reasonable cost.
- (2) Clauses 5 and 6 do not apply to New Zealand material.
- (3) Clause 7 does not prevail over any other enactment that applies, or disappplies, the enactments referred to in that clause to New Zealand material.

5 Proof of material incorporated by reference

- (1) A copy of the relevant version of any material incorporated by reference in the regulations must be—
 - (a) certified as a correct copy of the material by the Governor; and
 - (b) retained by the Bank.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the regulations of the material.

Schedule 1 clause 5(1)(b): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

6 Access to material incorporated by reference

- (1) The Bank—
 - (a) must make material incorporated by reference into regulations available for inspection during working hours free of charge at the head office of the Bank and at any other places that the Bank determines are appropriate; and
 - (b) must make printed copies of the material available either free or at no more than a reasonable cost; and
 - (c) may make the material available in any other way that the Bank considers appropriate in the circumstances (for example, on an Internet site); and
 - (d) must give notice in the *Gazette* stating—
 - (i) that the material is incorporated in the regulations, and the date on which the regulations were made; and
 - (ii) if a version of the material is specified, the version; and
 - (iii) that the material is available for inspection during working hours, free of charge, and the location of the place or places at which it can be inspected; and
 - (iv) that printed copies of the relevant version of the material are available either free or at no more than a reasonable cost, and the location of the place or places at which they can be obtained; and
 - (v) if the material is available under paragraph (c), that the material is available in other ways, and giving the details of how and where it can be accessed and obtained.
- (2) A failure to comply with this clause does not invalidate regulations that incorporate material by reference.

Schedule 1 clause 6(1): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Schedule 1 clause 6(1)(a): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

Schedule 1 clause 6(1)(c): amended, on 1 July 2022, by section 300(1) of the Reserve Bank of New Zealand Act 2021 (2021 No 31).

7 Application of Legislation Act 2019 to material incorporated by reference

Subpart 1 of Part 3 and section 114 of the Legislation Act 2019 do not apply to material that is incorporated by reference in regulations merely because it is incorporated.

Schedule 1 clause 7: replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Schedule 2

Consequential amendments to Reserve Bank of New Zealand Act 1989

s 92(1)

Section 39

Insert “, the Non-bank Deposit Takers Act 2013,” after “of this Act”.

Section 41

Subsection (1)(c): repeal and substitute:

- (c) the Insurance (Prudential Supervision) Act 2010; and
- (d) the Non-bank Deposit Takers Act 2013.

Subsection (2): repeal and substitute:

- (2) The Governor has the authority, in the performance of those functions, to act in relation to all matters that are not required, by any Act referred to in subsection (1), to be dealt with by the Board.

Section 46(1)(b)

Omit “or of a deposit taker as defined in section 157C” and substitute “or of a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013”.

Section 47

Subsection (1): add “or the Non-bank Deposit Takers Act 2013”.

Subsection (4): add “or the Non-bank Deposit Takers Act 2013”.

Section 49(2)(h)(iii)

Omit “or a deposit taker as defined in section 157C” and substitute “or a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013”.

Section 50(2)(d)(iii)

Omit “or a deposit taker as defined in section 157C” and substitute “or a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013”.

Section 51

Subsection (5): omit “under either of” and substitute “under any of”.

Subsection (5): add:

- (c) the Non-bank Deposit Takers Act 2013.

Subsection (9): add:

- (c) the Non-bank Deposit Takers Act 2013.

Section 53(3)(f)(iii)

Omit “or a deposit taker as defined in section 157C” and substitute “or a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013”.

Section 58(b)

Insert “or a licensed NBDT (as defined in the Non-bank Deposit Takers Act 2013)” after “licensed insurer”.

Section 66G(2)

Paragraph (e): insert “or under the Non-bank Deposit Takers Act 2013” after “under this Act”.

Section 68B(1)

Omit “Parts 5B to 5D” and substitute “Parts 5B and 5C”.

Section 81AA(3)

Repeal and substitute:

- (3) Schedule 1 of the Non-bank Deposit Takers Act 2013 applies to any material incorporated by reference in an Order in Council made under section 81 of this Act as if references in that schedule to regulations were references to an Order in Council made under section 81.

Section 159

Subsection (1)(da): repeal.

Subsection (1): insert after paragraph (e):

- (ea) the Non-bank Deposit Takers Act 2013:

Section 162AB(1)

Paragraph (a): omit “and Parts 5B to 5D and under” and substitute “, Parts 5B and 5C, and under the Non-bank Deposit Takers Act 2013 and”.

Paragraph (b): omit “and Parts 5B to 5D and under” and substitute “, Parts 5B and 5C, and under the Non-bank Deposit Takers Act 2013 and”.

Part 5D

Repeal.

Schedule 3

Repeal.

Schedule 4

Repeal.

Schedule 3 Consequential amendments to other enactments

s 92(2)

Part 1 Amendments to other Acts

Financial Advisers Act 2008 (2008 No 91)

Section 5: definition of **approved rating agency**: omit “Reserve Bank of New Zealand Act 1989” and substitute “Non-bank Deposit Takers Act 2013”.

Local Government Borrowing Act 2011 (2011 No 77)

Heading above section 7 and section 7: repeal and substitute:

Application of Non-bank Deposit Takers Act 2013

7 Funding Agency not a non-bank deposit taker

The Funding Agency is not an NBDT (a non-bank deposit taker) for the purposes of the Non-bank Deposit Takers Act 2013.

Search and Surveillance Act 2012 (2012 No 24)

Schedule: insert in its appropriate alphabetical order:

| | | | |
|----------------------------------|-------|---|-----------------------------------|
| Non-bank Deposit Takers Act 2013 | 52(1) | Appointed person may enter and search any place by consent or with warrant for purpose of investigating whether offence committed | All (except sections 118 and 119) |
|----------------------------------|-------|---|-----------------------------------|

Item relating to the Reserve Bank of New Zealand Act 1989 in the Schedule: omit so much of the item as relates to section 157ZM(1) of that Act.

Securities Trustees and Statutory Supervisors Act 2011 (2011 No 10)

Definition of **deposit taker** in section 4(1): repeal and substitute:

deposit taker means an NBDT as defined in section 5 of the Non-bank Deposit Takers Act 2013

Paragraph (f) of the definition of **issuer obligation** in section 4(1): repeal and substitute:

(f) the Non-bank Deposit Takers Act 2013:

Paragraph (f) of the definition of **licensee obligation** in section 4(1): repeal and substitute:

(f) the Non-bank Deposit Takers Act 2013:

Part 2

Amendments to regulations

Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 (SR 2010/167)

Enacting statement: omit “sections 157B, 157K, 157S, 157V, and 157ZY of the Reserve Bank of New Zealand Act 1989” and substitute “sections 24, 33, 36, and 74 of the Non-bank Deposit Takers Act 2013”.

Enacting statement: omit “in accordance with section 157E and taking into account the principles in section 157F” and substitute “in accordance with section 76 and taking into account the principles in section 8”.

Definition of **Act** in regulation 3(1): repeal and substitute:

Act means the Non-bank Deposit Takers Act 2013

Regulation 3(1): insert in their appropriate alphabetical order:

deposit taker means a licensed NBDT as defined in the Act

holding company means a company that has subsidiaries; and a company is another company’s holding company if, but only if, that other company is its subsidiary

Definition of **asset sale with recourse** in regulation 3(1): omit “member of the borrowing group” in each place where it appears and substitute in each case “guaranteeing subsidiary”.

Definition of **credit rating** in regulation 3(1): omit “section 157I” and substitute “section 23”.

Definition of **direct credit substitute** in regulation 3(1): omit “member of the borrowing group” in each place where it appears and substitute in each case “guaranteeing subsidiary”.

Definition of **forward asset purchase** in regulation 3(1): omit “member of the borrowing group” in each place where it appears and substitute in each case “guaranteeing subsidiary”.

Definition of **group member** in regulation 3(1): repeal.

Definition of **related party** in regulation 3(1): omit “in regulation 4” and substitute “in section 6 of the Act”.

Definition of **substantial interest** in regulation 3(1): repeal.

Regulation 4: repeal.

Regulation 5(2)(a): omit “despite regulation 4(2)” and substitute “despite the definition of related party”.

Regulation 6: omit “section 157I(a)” and substitute “section 23(1)(a)”.

Regulation 10(3)(e): omit “member of the borrowing group’s” and substitute “guaranteeing subsidiary’s”.

Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010 (SR 2010/167)—*continued*

Regulation 14(5): omit “within the meaning of section 5 of the Companies Act 1993”.

Regulation 16(2): omit “members of the borrowing group” in each place where it appears and substitute in each case “guaranteeing subsidiaries”.

Regulation 17(2)(a)(ii): omit “members of the borrowing group” and substitute “guaranteeing subsidiaries”.

Regulation 19(2): omit “member of the borrowing group” and substitute “guaranteeing subsidiary”.

Regulation 20: omit “member of the borrowing group” in each place where it appears and substitute in each case “guaranteeing subsidiary”.

Regulation 23(2): omit “section 157ZD” and substitute “section 79”.

Regulation 25(1): omit “member of its borrowing group” and substitute “guaranteeing subsidiary”.

Regulation 26(1)(b): omit “member of the borrowing group” and substitute “guaranteeing subsidiary”.

Deposit Takers (Liquidity Requirements) Regulations 2010 (SR 2010/351)

Enacting statement: omit “section 157Z of the Reserve Bank of New Zealand Act 1989” and substitute “section 39 of the Non-bank Deposit Takers Act 2013”.

Enacting statement: omit “section 157E” and substitute “section 76”.

Enacting statement: omit “section 157F” and substitute “section 8”.

New regulation 2A: insert after regulation 2:

2A Interpretation

In these regulations, **deposit taker** means a licensed NBDT as defined in the Non-bank Deposit Takers Act 2013.

Schedule 4

Amendments relating to financial markets legislation

s 102

Financial Markets Conduct Act 2013 (2013 No 69)

Section 6(1): insert in its appropriate alphabetical order:

NBDT has the same meaning as in section 5 of the Non-bank Deposit Takers Act 2013

Paragraph (f) of the definition of **issuer obligation** in section 6(1): repeal and substitute:

(f) the Non-bank Deposit Takers Act 2013

Definition of **approved rating agency** in section 60(3): insert “, section 86 of the Non-bank Deposit Takers Act 2013,” after “1989”.

Clause 37(1)(c) of Schedule 1: repeal and substitute:

(c) an NBDT; or

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70)

Items relating to sections 157B(1), 157C(1)(a)(i) and (c)(i) and (2) to (4), and 157D of the Reserve Bank of New Zealand Act 1989 in the Schedule: omit.

Financial Markets Supervisors Act 2011 (2011 No 10)

Paragraph (g) of the definition of **issuer obligation** in section 4(1): repeal and substitute:

(g) the Non-bank Deposit Takers Act 2013

Paragraph (g) of the definition of **licensee obligation** in section 4(1): repeal and substitute:

(g) the Non-bank Deposit Takers Act 2013:

Notes

1 *General*

This is a consolidation of the Non-bank Deposit Takers Act 2013 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Reserve Bank of New Zealand Act 2021 (2021 No 31): section 300(1)

Secondary Legislation Act 2021 (2021 No 7): section 3

Senior Courts Act 2016 (2016 No 48): section 183(b)

Non-bank Deposit Takers Act Commencement Order (No 2) 2014 (LI 2014/321)

Non-bank Deposit Takers Act Commencement Order 2014 (LI 2014/14)

Non-bank Deposit Takers Act 2013 (2013 No 104): sections 95–101