



ANALYSIS

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1995, No. 5

An Act to amend the Reserve Bank of New Zealand Act 1989
[24 March 1995]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Reserve Bank of New Zealand Amendment Act 1995, and shall be read together with and deemed part of the Reserve Bank of New Zealand Act 1989 (hereinafter referred to as the principal Act).

(2) Except as provided in sections 6 (2) and 13 (4) of this Act, this Act shall come into force on the date on which it receives the Royal assent.

2. Interpretation—Section 2(1) of the principal Act is hereby amended by inserting, after the definition of the term “Governor”, the following definition:

“‘Holding company’ means a holding company within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be.”.

3. Conditions of registration—Section 74 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) The Bank may, from time to time, by notice in writing to a registered bank—

“(a) Impose conditions of registration whether or not the registration of the bank is subject to conditions; or

“(b) Vary, add to, remove, or substitute any conditions of registration.

“(3) The Bank shall not exercise a power referred to in subsection (2) of this section unless—

“(a) The Bank gives the registered bank not less than 7 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; and

“(c) The registered bank has a reasonable opportunity to make submissions to the Bank; and

“(d) The Bank has regard to those submissions.”

4. Cancellation of registration—Section 77 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) The Bank shall not make a recommendation under subsection (1) of this section unless—

“(a) The Bank gives the registered bank not less than 7 days’ notice in writing of the Bank’s intention to consider making the recommendation; and

“(b) The notice contains or is accompanied by a statement of the Bank’s reasons; and

“(c) The registered bank has a reasonable opportunity to make submissions to the Bank; and

“(d) The Bank has regard to those submissions.”

5. Carrying on business in prudent manner—Section 78 (3) of the principal Act is hereby amended by omitting the word “shall”, and substituting the word “may”.

6. Section 79 repealed—(1) Section 79 of the principal Act is hereby repealed.

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

7. New sections substituted—The principal Act is hereby amended by repealing section 81, and substituting the following sections:

“81. Public disclosure of financial and other information by registered banks—(1) The Governor-General may from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, prescribe information that shall be published by all registered banks or by any class of registered bank specified in the order.

“(2) Every registered bank to which an Order in Council under subsection (1) of this section applies must publish the information specified in the order in a document to be known as a ‘disclosure statement’, in the manner, and on the occasions specified in the order.

“(3) Without limiting the information that may be prescribed, an Order in Council under subsection (1) of this section may prescribe information relating to—

“(a) Directors, principal officers, secretary, auditors, bankers, and solicitors:

“(b) Incorporation and ownership structure:

“(c) Financial and accounting systems and controls:

“(d) Assets and liabilities, including asset and liability maturities:

“(e) Income and expenditure:

“(f) Fees and charges, including interest rates charged and payable:

“(g) Capital structure:

“(h) Loan concentrations and risk exposures:

“(i) Liquidity:

“(j) Obligations and commitments, including contingent liabilities:

“(k) Transactions with related parties:

“(l) Foreign exchange and interest rate exposures:

“(m) Pending proceedings and arbitrations:

“(n) Acquisitions.

“(4) In addition to information relating to the registered bank itself, an Order in Council under subsection (1) of this section may require a registered bank to disclose—

- “(a) Information relating to the holding company of the registered bank, where the information is publicly available in the country in which the holding company is incorporated:
- “(b) Information in consolidated form relating to the banking group of which the registered bank is a member.
- “(5) Without limiting subsection (1) or subsection (3) of this section, an Order in Council under subsection (1) of this section may—
- “(a) Prescribe information that is required to be contained in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993) in financial statements:
- “(b) Require the publication of financial statements and notes to those statements for any period or periods specified in the order:
- “(c) Require financial statements and information to be published in consolidated form:
- “(d) Require financial information that is required to be published to be taken from audited financial statements:
- “(e) Require financial statements and information that are required to be published to be audited and to be accompanied by an auditor’s report:
- “(f) Require a disclosure statement to contain such statement by the directors of the registered bank or persons authorised in writing by the directors of the bank relating to the affairs of the bank as may be specified in the order.
- “(6) Subject to subsection (7) of this section, a registered bank is not required to publish information relating to the affairs of a particular customer or client of the bank, the holding company of the bank, or a member of the banking group.
- “(7) Nothing in subsection (6) of this section applies to the publication of information by a registered bank in relation to the bank or the holding company of the bank for the purposes of paragraph (k) of subsection (3) of this section.
- “(8) For the purposes of subsection (6) of this section, the publication pursuant to a requirement imposed under paragraph (h) of subsection (3) of this section of—
- “(a) The amount of any loan or risk exposure (without disclosing the identity of the particular customer or client to whom it relates); or

“(b) The number of loans or risk exposures falling within a specified range of amounts and the actual amounts of those loans or risk exposures; or

“(c) The number of loans or risk exposures the amounts of which fall within a specified range of percentages, or are above a specified percentage, as the case may be, of the capital or equity of the registered bank or the banking group and the actual amounts thereof—

is not publication of information relating to the affairs of a particular customer or client of the bank, the holding company of the bank, or a member of the banking group.

“(9) Every Order in Council made under subsection (1) of this section shall be published in the *Gazette*.

“(10) The Regulations (Disallowance) Act 1989 shall apply to every Order in Council made under subsection (1) of this section as if the order was a regulation within the meaning of section 2 of that Act.

“(11) For the purposes of paragraph (k) of subsection (3) of this section, the term ‘related party’ shall have the meaning given to it in the Order in Council under subsection (1) of this section.

“(12) For the purposes of paragraph (b) of subsection (4) of this section, the term ‘banking group’ shall have the meaning given to it in the Order in Council under subsection (1) of this section.

“81A. **Bank to consult**—(1) Before making a recommendation under section 81 (1) of this Act (including a recommendation to amend any Order in Council made under that subsection) the Bank must—

“(a) Consult with—

“(i) The Securities Commission; and

“(ii) Registered banks that will be affected by any Order in Council made under that subsection; and

“(iii) Such other persons as the Bank considers will be substantially affected by any Order in Council made under that subsection or organisations representing those persons; and

“(b) Ensure that the persons referred to in paragraph (a) of this subsection have a reasonable opportunity to make submissions to the Bank; and

“(c) Have regard to those submissions.

“(2) Failure to comply with subsection (1) of this section does not affect the validity of any Order in Council under section 81 (1) of this Act.

“(3) Any action taken by the Bank before the coming into force of the Reserve Bank of New Zealand Amendment Act 1995 that would, if this section had then been in force, have constituted action taken under this section, shall be treated as having been taken under this section.”

8. Sections relating to advertising by registered banks repealed—The principal Act is hereby amended by repealing sections 84 to 88 and the heading above those sections.

9. New sections substituted—The principal Act is hereby amended by repealing sections 89 to 92 and the heading above those sections, and substituting the following heading and sections:

“Provisions Applying to Disclosure Statements

“89. Offences in relation to disclosure statements—(1) Every registered bank commits an offence against this section if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act.

“(2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every director of the registered bank who signed the disclosure statement, or on whose behalf the disclosure statement was signed, commits an offence against this section.

“(3) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000.

“(4) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, or to a fine not exceeding \$25,000.

“(5) It is a defence to a prosecution for an offence against subsection (2) of this section against a registered bank or a person holding office as a director of a registered bank, as the case may be, if the defendant proves that the information was immaterial.

“(6) It is a defence to a prosecution for an offence against subsection (2) of this section against a person who is a director

of a registered bank if the defendant proves that he or she had reasonable grounds to believe and did, up to the publication of the disclosure statement, believe that the information was true.

“90. **Civil liability**—Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement, namely,—

“(a) The registered bank; and

“(b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement.

“91. **Defences**—A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that—

“(a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or

“(b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or

“(c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

“92. **Fair Trading Act 1986 not affected**—Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986.”

10. Penalties for offences—Section 176 of the principal Act is hereby amended by omitting the words “conviction on indictment”, and substituting the words “summary conviction”.

11. Exemption from Securities Act 1978—Section 181 of the principal Act is hereby amended by repealing subsection (8), and substituting the following subsection:

“(8) Section 5 of the Securities Act 1978 (as so amended) is hereby amended by inserting, after subsection (2B), the following subsection:

“(2c) Nothing in sections 33 (2), 37, 37A, 38, 39 to 44, 44B to 52, and 54 of this Act shall apply in respect of any debt security the issuer of which is a registered bank.”

12. Consequential amendment—Section 1 (2) of the principal Act is hereby amended by omitting the words “sections 85, 87 to 92, and”.

13. Amendments to Securities Act 1978—(1) Section 2 (1) of the Securities Act 1978 is hereby amended by inserting in the definition of the term “advertisement” (as inserted by section 2 (1) of the Securities Amendment Act 1982), after the words “section 3 (7) of this Act”, the words “, or a disclosure statement published by a registered bank in accordance with section 81 of the Reserve Bank of New Zealand Act 1989”.

(2) Section 2 (1) of the Securities Act 1978 is hereby further amended by inserting, in its appropriate alphabetical order, the following definition:

“‘Registered bank’ has the same meaning as in section 2 (1) of the Reserve Bank of New Zealand Act 1989:”.

(3) The Securities Act 1978 is hereby amended by inserting, after section 38, the following section:

“38AA. Meaning of ‘authorised advertisement’ in relation to offers of debt securities by registered banks—In this Act, the term ‘authorised advertisement’, in relation to an offer of debt securities the issuer of which is a registered bank, means an advertisement that—

“(a) States that there is a current disclosure statement published by the registered bank under section 81 of the Reserve Bank of New Zealand Act 1989; and

“(b) Specifies the place or places at which a copy of that disclosure statement may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent a copy of that disclosure statement, or both; and

“(c) Complies with this Act and all regulations made under this Act relating to advertisements.”

(4) Subsection (3) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

(5) Section 44A of the Securities Act 1978 (as substituted by section 49 of the Securities Amendment Act 1988) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Without limiting subsection (1) of this section, where, at any time, the Commission is of the opinion that an advertisement that contains or refers to an offer of debt securities the issuer of which is a registered bank is inconsistent with the most recent disclosure statement published by the registered bank under section 81 of the Reserve Bank of New Zealand Act 1989, the Commission may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.”

14. Amendment to Summary Proceedings Act 1957—Part II of the First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Reserve Bank of New Zealand Act 1989	89	Offences in relation to disclosure statements
	126	Removal of assets
	151	Destroying, altering, or concealing records”

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