

RESERVE BANK OF NEW ZEALAND AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Reserve Bank of New Zealand Act 1964.

Clause 2 substitutes a new section 2 in the principal Act. New provisions are the definitions of the terms “credit sale agreement”, “hire purchase agreement”, and “interest” and subsections (2) to (8).

The definitions of the terms “credit sale agreement” and “hire purchase agreement” are derived from the Finance Companies (Investment) Regulations (No. 2) 1969 (S.R. 1969/216).

The definition of the term “interest” is an extended definition inserted for the purposes of sections 34 to 34AA and of any regulations made under section 50 of the principal Act pursuant to section 34AA (1).

The new subsections (2) to (8) extend the meaning of various terms such as “the receiving of credit”, “the giving of credit”, “the lending of money”, and “the borrowing of money”. The new subsections are all based on provisions of the Finance Companies (Investment) Regulations (No. 2) 1969 (S.R. 1969/216).

The definition of the term “financial institution” is amended by omitting from paragraphs (a) and (b) the words “(other than normal trade credit)”. The question whether the receiving of credit includes, for the purposes of this Act, the receiving of trade credit is now covered by the new subsection (2). The question whether the granting of credit includes, for the purposes of this Act, the granting of trade credit is now covered by the new subsection (3).

Clause 3 substitutes a new section 34 (which relates to the control of bank credit and interest rates) in the principal Act.

The section empowers the Reserve Bank to give directions to the trading banks as to the policy to be followed in relation to certain matters. These matters will now include—

- (a) Acceptances:
- (b) Minimum or maximum rates of discount (as opposed to rates of discount):
- (c) Minimum or maximum rates of interest (as opposed to rates of interest):
- (d) Maximum charges for acceptances.

Clause 4 substitutes new sections 34A and 34AA for the existing section 34A.

Section 34A empowers the Reserve Bank to make recommendations to financial institutions (other than trading banks) with respect to the policy to be followed in their businesses. The matters in respect of which such recommendations can be given will now include acceptances.

Section 34AA replaces subsection (4) of the existing section 34A. Under the existing section the Governor-General may by Order in Council specify rates of interest to be paid to or by financial institutions (other than trading banks). The new section (which is more detailed than the existing provision) provides for the interest rates of financial institutions (including trading banks) to be controlled by regulations instead of by Order in Council. Provision is made for fixing actual rates of interest or maximum rates of interest or minimum rates of interest.

Clause 5 substitutes a new section 34C in the principal Act. The existing section provides that the Governor-General may by Order in Council require financial institutions (other than trading banks) to hold certain specified assets, such as Government securities. Under the new section this power will be exercised by regulations instead of by Order in Council.

Clause 6 effects consequential repeals.

Clause 7 continues the Interest on Deposits Order (No. 2) 1982 in force as if it were a regulation made under section 50 of the principal Act.

Clause 8 continues in force, as if they were regulations made under section 50 of the principal Act, the regulations and Orders in Council made under section 34C of the principal Act.

Clause 9 ensures that the regulations and Orders in Council to which *clauses 7 and 8* of the Bill apply may be amended or revoked under the principal Act.

Right Hon. Mr Muldoon

RESERVE BANK OF NEW ZEALAND AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Reserve Bank of New Zealand Act 1964

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Reserve Bank of New Zealand Amendment Act 1982, and shall be read together with and deemed part of the Reserve Bank of New Zealand Act 1964* (hereinafter referred to as the principal Act).

*Reprinted 1974, Vol. 3, p. 2439
Amendments: 1975, No. 19; 1977, No. 68; 1980, No. 138

2. Interpretation—The principal Act is hereby amended by repealing section 2, and substituting the following section:

“2. (1) In this Act, unless the context otherwise requires,—

“‘Authorised money-market dealer’ means a person (including a body of persons, whether incorporated or not) for the time being approved by the Reserve Bank, by notice in the *Gazette*, as a money-market dealer for the purposes of this Act: 5

“‘Bank note’ or ‘note’ means any negotiable instrument used or circulated, or intended for use or circulation, 10 as currency:

“‘Credit instrument’ means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times: 15

“‘Credit sale agreement’ means an agreement for the sale of goods under which the whole or part of the purchase price is payable by instalments, other than such an agreement that provides for the instalments to be spread over a period of 6 months or less: 20

“‘Deputy Governor’ means the Deputy Governor of the Reserve Bank appointed under this Act:

“‘Financial institution’ means any person (including a body of persons, whether incorporated or not) who in the course of business— 25

“(a) Borrows money or accepts deposits (whether on demand or for a fixed term) or receives credit or sells any credit instrument; and also

“(b) Lends money or grants credit or buys or discounts any credit instrument;— 30

and, without limiting the generality of the foregoing provisions of this definition, includes—

“(c) Any person (including a body of persons, whether incorporated or not) who acts as agent or intermediary in any of the transactions aforesaid; 35 and

“(d) Any trustee savings bank established under the Trustee Savings Banks Act 1948; and

“(e) Any private savings bank as defined in section 2 of the Private Savings Banks Act 1964; and 40

“(f) Any life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908; and includes any branch, division, or office of any such company; and

“(g) Any superannuation fund or scheme that—

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“(i) Is approved by, or is deemed to have been granted the interim approval of, the Government Actuary under the Superannuation Schemes Act 1976; or

“(ii) Is approved for the time being for the purposes of the Income Tax Act 1976 by the Government Actuary; or

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“(iii) Is declared by the Governor-General by Order in Council, either specifically or by reference to a class of superannuation fund or scheme defined in that Order in Council, to be a financial institution for the purposes of this Act; and

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“(h) Any building society as defined in section 2 of the Building Societies Act 1965; and

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“(i) Any specified person or class of persons (including a body or bodies of persons, whether incorporated or not) engaged in the business of borrowing or lending money or buying, selling, or otherwise dealing in credit instruments who is or are declared by the Governor-General, by Order in Council, to be a financial institution or institutions for the purposes of this Act:

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“ ‘Governor’ means the Governor of the Reserve Bank appointed under this Act:

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“ ‘Hire purchase agreement’ means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee, whether on the performance of any act by the parties to the agreement or any of them or in any other circumstances; and includes any agreement for the bailment of goods, with or without expressly giving to the bailee an option to buy the goods, under which instalments are payable by the bailee during a specified or ascertainable period at the end of which the bailee may continue the bailment without any payment or subject to the payment of a nominal rent only:

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“ ‘Interest’, in sections 34 to 34AA of this Act and in any regulations made under section 50 of this Act pursuant to section 34AA (1) of this Act, includes, in relation to any loan, deposit, or credit, all money or

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money's worth paid or otherwise provided to or for the benefit of the lender, depositor, or creditor in excess of the amount of the loan, deposit, or credit:

“ ‘Minister’ means the Minister of Finance:

“ ‘Reserve Bank’ or ‘the Bank’ means the Reserve Bank 5
of New Zealand constituted under this Act:

“ ‘Trade credit’ means credit given or, as the case may require, received in the course of business in relation to the sale or purchase of goods or the provision of 10
services:

“ ‘Trading bank’ means any bank named in the First Schedule to this Act.

“(2) For the purposes of this Act, the receiving of credit includes the receiving of, or the entering into of an agreement to receive, trade credit except where the trade credit received 15
or agreed to, whether in the course of a bona fide mercantile current account or otherwise, is for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the 20
case may be, from the date of completion of that item of services.

“(3) For the purposes of this Act, the giving of credit includes the giving of, or the entering into of an agreement to give, trade credit except where the trade credit given or 25
agreed to, whether in the course of a bona fide mercantile account or otherwise, is for a total period not exceeding 6 months in respect of any one item of goods or services, being a period commencing from the date on which possession of that item of goods is given and taken or, as the case may be, 30
from the date of completion of that item of services.

“(4) For the purposes of this Act, a person shall be deemed to lend money if that person—

“(a) Finances or discounts hire purchase agreements or credit sale agreements; or 35

“(b) Pays sums as consideration for the assignment, to that person, of debts or other obligations owing or due to the person to whom the consideration is paid; or

“(c) Purchases goods for the purpose of entering into agreements for the bailment of those goods under 40
which the bailee will have the right to their exclusive possession for any period exceeding 3 months.

“(5) For the purposes of subsection (4) (a) of this section, where by virtue of two or more agreements, none of which by 45
itself constitutes a hire purchase agreement or a credit sale agreement, there is a transaction which is in substance or

effect a hire purchase agreement or a credit sale agreement, as defined in subsection (1) of this section, the transaction shall be treated as a hire purchase agreement or credit sale agreement.

5 “(6) For the purposes of this Act, a person shall be deemed to borrow money if that person sells any land or interest in land, whether within or outside New Zealand, on terms providing a right for that person or any nominee of that person to continue in possession or to resume or take
10 possession of the land or any part thereof (whether under a lease or otherwise) and also providing a right for that person or any nominee of that person to repurchase the land or any part thereof; and in any such case the amount of the consideration for such sale by that person of the land or
15 interest in land shall be deemed to be an amount borrowed by that person.

“ (7) For the purposes of this Act, where any body corporate incorporated outside New Zealand and carrying on business through a branch or branches in New Zealand does
20 not have its head office in New Zealand,—

“ (a) Each such branch shall be deemed to be a separate person; and

“ (b) Any money made available to any such branch by the body corporate shall be deemed to be borrowed by
25 that branch.

“ (8) In this Act, the term ‘borrows’ shall be construed to include the doing of any act or thing which by virtue of any of the foregoing provisions of this section amounts to borrowing; but nothing in this subsection or in the foregoing provisions of
30 this section shall be construed to limit the generality of the term ‘borrows’ or of any derivative of that term or of any references in this Act to the borrowing of money.”

3. Control of bank credit and interest rates—The principal Act is hereby amended by repealing section 34 (as
35 amended by section 7 (2) of the Reserve Bank of New Zealand Amendment Act 1977), and substituting the following section:

“34. (1) The Reserve Bank may from time to time, where it is satisfied that it is necessary or expedient in the public
40 interest to do so, by notice in writing to all trading banks, give them directions as to the policy to be followed in relation to advances, discounts, acceptances, and investments and as to the rates of interest which may be made payable to or by them, and, without limiting the generality of the foregoing
45 provisions of this subsection, as to—

- “(a) The aggregate amounts and limits of advances, discounts, acceptances, and investments for the time being deemed appropriate:
- “(b) The classes of advances and discounts that should be encouraged or restricted or refused, and the classes of investments that may or may not be made or held: 5
- “(c) The minimum or maximum rates of discount which may be charged by trading banks in respect of all or any classes of transaction: 10
- “(d) The minimum or maximum rates of interest which may be paid to or by trading banks in respect of all or any classes of transaction:
- “(e) The maximum charges which may be made by trading banks for acceptances. 15
- “(2) A notice given under this section shall apply uniformly to all trading banks.
- “(3) Nothing in this section shall—
- “(a) Authorise the Reserve Bank to require any trading bank to disclose the identity of any particular customer; or 20
- “(b) Affect the validity or enforceability, as between any trading bank and any other person, of any transaction.
- “(4) If any trading bank, without lawful justification or excuse, fails to comply with any direction given under this section, it commits an offence against this Act.” 25

4. New sections substituted—The principal Act is hereby amended by repealing section 34A (as inserted by section 9 of the Reserve Bank of New Zealand Amendment Act 1973 and amended by section 7 (2) of the Reserve Bank of New Zealand Amendment Act 1977), and substituting the following sections: 30

“34A. **Control of lending of financial institutions (other than trading banks)**—(1) The Reserve Bank may from time to time make recommendations to any class or classes of financial institutions (other than trading banks) with respect to the policy to be followed in their business. 35

“(2) The Reserve Bank may, from time to time, with the consent of the Minister, where it is satisfied that it is necessary or expedient in the public interest to do so, by notice in writing to any class or classes of financial institutions (other than trading banks) give them directions as to the policy to be followed in relation to acceptances, lending, and investments. 40 45

“(3) Without limiting the generality of subsection (2) of this section, directions under that subsection may relate to—

5 “(a) The aggregate amounts of acceptances, lending, and investments for the time being that the Bank considers appropriate:

“(b) The classes of loans that should be encouraged or restricted or refused, and the classes of investments that may or may not be made or held.

“(4) Nothing in this section—

10 “(a) Authorises the Reserve Bank to require any financial institution to disclose the identity of any particular customer; or

“(b) Affects the validity or enforceability, as between any financial institution and any other person, of any

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transaction.
“(5) If any financial institution, without lawful justification or excuse, fails to comply with any direction given under subsection (2) of this section, it commits an offence against this Act.

20 “34AA. **Regulations controlling interest rates of financial institutions**—(1) Without limiting the powers conferred by sections 34 and 34A of this Act, the Governor-General may from time to time, by Order in Council, make regulations under section 50 of this Act providing for the regulation and

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control of the rates of interest to be paid to or by financial institutions or any specified class or classes of financial institutions.
“(2) Without limiting the generality of subsection (1) of this section or of section 50 of this Act, any regulations made

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under section 50 of this Act pursuant to subsection (1) of this section may provide for all or any of the following matters:
“(a) The specification, by reference to actual rates or to maximum rates or to minimum rates, of the rates of interest that may be paid to or by financial

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institutions:
“(b) The specification, pursuant to paragraph (a) of this subsection, of different rates according—

“(i) To the class of financial institution; or

“(ii) To the term of the obligation; or

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“(iii) To different classes of deposits, borrowing, or lending as defined in the regulations; or

“(iv) To the amount of the deposit, borrowing, or lending.

“(3) Nothing in any regulations made under section 50 of this Act pursuant to subsection (1) of this section shall affect the validity or enforceability, as between any financial institution and any other person, of any transaction.

“(4) If any financial institution, without lawful justification 5 or excuse, fails to comply with any regulations made under section 50 of this Act pursuant to subsection (1) of this section, it commits an offence against this Act.”

5. Financial institutions (other than trading banks) to hold specified assets—The principal Act is hereby 10 amended by repealing section 34C (as inserted by section 11 of the Reserve Bank of New Zealand Amendment Act 1973 and as amended by section 7 (2) of the Reserve Bank of New Zealand Amendment Act 1977), and substituting the following section: 15

“34C. (1) Without limiting the powers conferred by sections 34A and 34AA of this Act, the Governor-General may from time to time, by Order in Council, make regulations under section 50 of this Act, requiring all or any specified class or classes of or any specified financial institutions (other 20 than trading banks)—

“(a) To hold balances at the Reserve Bank or a trading bank; or

“(b) To hold Government or local authority securities; or

“(c) To hold assets of such kind or kinds as may be 25 specified in the regulations, including balances at the Reserve Bank and a trading bank and Government and local authority securities, or any one or more of such balances or securities,—

of such minimum amount as is specified in the regulations: 30

“Provided that no regulations under this subsection shall require any building society that, by an Order in Council under section 63 of the Building Societies Act 1965, is designated as a society with which trustees may invest trust funds by way of deposit to hold a lesser amount of any asset 35 than the amount prescribed for such asset by or pursuant to regulations made under the said section 63.

“(2) If any financial institution fails to comply with any regulations made under section 50 of this Act pursuant to subsection (1) of this section, the Reserve Bank may, by 40 notice in writing to that institution, direct that during a period specified in the direction that institution shall discontinue, or limit in any manner specified in the direction, the granting of credit or the making of investments, and shall

not pay any dividend; and on the service of the notice on that institution it shall not be lawful for it to grant any credit or make any investments or pay any dividend in breach of that notice during the period so specified.

5 “(3) If any financial institution, without lawful justification or excuse, fails to comply with any direction contained in a notice given under subsection (2) of this section or with any regulations made under section 50 of this Act pursuant to subsection (1) of this section, it commits an offence against
10 this Act.”

6. Repeals—The following enactments are hereby consequentially repealed:

- (a) Sections 2, 9, and 11 of the Reserve Bank of New Zealand Amendment Act 1973:
- 15 (b) Section 2 of the Reserve Bank of New Zealand Amendment Act 1975:
- (c) So much of the Schedule to the Superannuation Schemes Act 1976 as relates to the definition of the term “financial institution” in section 2 of the
20 principal Act:
- (d) So much of the Second Schedule to the Reserve Bank of New Zealand Amendment Act 1977 as relates to section 34A (5) and section 34C (3) of the principal Act.

25 **7. Interest on Deposits Order (No. 2) 1982 continued in force**—Notwithstanding anything in section 3 of this Act, the Interest on Deposits Order (No. 2) 1982 (being an order made under section 34A of the Reserve Bank Act 1964) shall continue in force as if it were a regulation made under section
30 50 of the principal Act pursuant to section 34AA (1) of the principal Act.

8. Regulations and orders relating to financial institutions continued in force—Notwithstanding anything in section 5 of this Act, the regulations and Orders in
35 Council specified in the Schedule to this Act shall continue in force as if they were regulations made under section 50 of the principal Act pursuant to section 34C (1) of the principal Act (as substituted by section 5 of this Act).

9. Saving—Nothing in this Act affects the power to amend
40 or revoke under the principal Act, the Order in Council specified in section 7 of this Act or the regulations and Orders in Council specified in the Schedule to this Act.

Section 8

SCHEDULE

REGULATIONS AND ORDERS IN COUNCIL CONTINUED IN FORCE

Title	Statutory Regulations Serial Number
The Finance Companies (Investment) Regulations (No. 2) 1969	1969/216
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 1	1970/148
The Building Societies Investments Order 1977	1977/70
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 2	1977/154
The Building Societies Investments Order 1977, Amendment No. 1	1977/155
The Trustee Savings Banks (Government Securities) Order 1980	1980/2
The Private Savings Banks (Government Securities) Order 1980	1980/3
The Finance Companies (Investment) Regulations (No. 2) 1969, Amendment No. 3	1980/7
The Superannuation Funds Investment Order 1980	1980/125
The Life Insurance Companies Investments Order 1980... ..	1980/130
The Trustee Savings Banks (Government Securities) Order 1980, Amendment No. 1	1982/43
The Life Insurance Companies Investments Order 1980, Amendment No. 1	1982/67
The Building Societies Investments Order 1977, Amendment No. 2	1982/68
The Superannuation Funds Investment Order 1980, Amendment No. 1	1982/69