

RESERVE BANK OF NEW ZEALAND AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THIS Bill amends the Reserve Bank of New Zealand Act 1989. The Bill has 3 main purposes.

The first is to confer power on the Reserve Bank to impose conditions on the registration of a registered bank in addition to conditions imposed at the time of its registration.

The second is to authorise the Reserve Bank to require a registered bank to publish in disclosure statements under section 81 of the Act information relating to its holding company and transactions with related parties.

The third is to remove from the Act the proposed controls on advertising by registered banks.

In relation to this aspect of the Bill, the principal Act currently contains provisions, though not yet in force, that would require registered banks to publish disclosure statements and comply with regulations to be made under the Act relating to advertising of debt securities. The principle underlying these provisions is that financial disclosure and advertising by registered banks would be subject to control under the Reserve Bank of New Zealand Act 1989 and not the Securities Act 1978. Registered banks would not, when the content of the disclosure statements and advertising regulations was prescribed under the present Act, be required to comply with the prospectus or advertising requirements of the Securities Act 1978 or the Securities Regulations 1983.

The Bill repeals sections 84 to 88 of the principal Act relating to advertising. The disclosure statement requirements will remain but advertising by registered banks, in relation to debt securities, will be subject to securities legislation. Registered banks will no longer be required to issue prospectuses under the Securities Act 1978 in respect of debt securities, but they will be subject to that Act as regards advertising.

Clause 1 relates to the Short Title of the Bill.

Clause 2 inserts a definition of the term "holding company" into section 2 of the principal Act. The term is referred to in the new *section 81*.

Clause 3 amends section 74 of the principal Act. Section 74 (2) confers power on the Reserve Bank to impose conditions on the registration of a registered bank that has been registered unconditionally or that has been deemed to have

been registered. It does not permit additional conditions to be imposed on the registration of a bank the registration of which is already subject to conditions. *Clause 3* gives the Bank the power to impose additional conditions in such a case.

Clause 4 amends section 78 (3) of the principal Act. Section 78 specifies the matters to which the Reserve Bank may have regard in determining the ability of an applicant for registration as a registered bank to carry on business in a prudent manner and in determining, for the purposes of cancelling registration, that a registered bank has not carried on business in a prudent manner. Subsection (3) requires the Governor of the Reserve Bank to issue guidelines for the purpose of interpreting those matters. *Clause 4* removes that obligation to do so. The Governor may, but will no longer be required to, issue guidelines.

Clause 5 repeals section 81 of the principal Act (which relates to the publication of disclosure statements by registered banks) and substitutes a new section. The principal changes are that registered banks may now be required to publish, in disclosure statements, information relating to their holding companies if the information is publicly available in the country in which the holding company is incorporated and information relating to transactions with related parties.

Clause 6 repeals sections 84 to 88 of the principal Act. Advertising of debt securities by registered banks will not be controlled by regulations under the Act. Registered banks will be required to publish disclosure statements in accordance with the new *section 81* and will continue to be subject to the advertising requirements of the Securities Act 1978 and the Securities Regulations 1983 in relation to advertising of debt securities.

Clause 7 repeals sections 89 to 92 of the principal Act and substitutes new sections. The present section 89 (which creates certain offences in relation to disclosure statements and advertisements) provides that, in the case of proceedings against an individual for an offence against the section, the proceedings are to be taken summarily. The new *section 89* makes an offence by an individual an indictable offence. *Clause 12* of the Bill amends the Summary Proceedings Act 1957. The effect of the amendment to that Act is that certain indictable offences may be proceeded with summarily. Offences against the new *section 89* are included in the offences that may be proceeded with summarily.

With this exception, the changes to these sections are consequential.

Clause 8 amends section 176 of the principal Act. Section 176 provides that where a person commits an offence against the Act for which no penalty is provided elsewhere in the Act, the person is liable on conviction on indictment to the penalties specified in that section. The amendment provides for summary conviction instead of conviction on indictment.

Clause 9 effects a consequential amendment to section 181 of the principal Act. Section 181 (8), though not yet in force, amends section 5 of the Securities Act 1978 for the purpose of exempting from that Act offers of debt securities by registered banks. This exemption will now be limited to the prospectus requirements of that Act. In relation to advertising of debt securities, registered banks will have to comply with the advertising requirements of that Act and the Securities Regulations 1983.

Clause 10 makes a consequential amendment to section 1 (2) of the principal Act.

Clause 11 makes a number of amendments to the Securities Act 1978.

Subclause (1) amends the definition of the term “advertisement” in section 2 (1) to make it clear that the term does not include disclosure statements under the Reserve Bank of New Zealand Act 1989.

Subclause (2) inserts a definition of the term “registered bank” into section 2 (1) of the Act.

Subclause (3) inserts a new *section 38AA* into the Act. The new section defines the term “authorised advertisement” in relation to offers of debt securities by registered banks.

Subclause (4) amends section 44A. Section 44A confers power on the Securities Commission to prohibit the distribution of advertisements of securities on a number of grounds. The Commission may, for example, prohibit distribution if it is of the opinion that the advertisement is inconsistent with a prospectus referred to in the advertisement. The amendment confers on the Commission a similar power to prohibit an advertisement of debt securities by a registered bank where the advertisement is inconsistent with the information contained in a disclosure statement published under the new *section 81*.

Clause 12 amends the Summary Proceedings Act 1957. The effect of the amendment is that proceedings for certain offences against the principal Act that are punishable on conviction on indictment may be proceeded with summarily.

The offences that may be proceeded with summarily are—

- (a) The offences against the new *section 89* (which relates to disclosure statements);
 - (b) The offence against section 126 of transferring or removing, without the consent of the statutory manager, property or assets of a registered bank that is in statutory management;
 - (c) The offences against section 151 of destroying, altering, or concealing documents relating to a registered bank that is in statutory management and of failing or refusing to answer questions in relation to such documents.
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Rt. Hon. W. F. Birch

**RESERVE BANK OF NEW ZEALAND AMENDMENT
(NO. 2)**

ANALYSIS

Title	<i>Provisions Applying to Disclosure Statements</i>
1. Short Title	89. Offences in relation to disclosure statements
2. Interpretation	90. Civil liability
3. Conditions of registration	91. Defences
4. Carrying on business in prudent manner	92. Fair Trading Act 1986 not affected
5. Public disclosure of financial and other information by registered banks	8. Penalties for offences
6. Sections relating to advertising by registered banks repealed	9. Exemption from Securities Act 1978
7. New sections substituted	10. Consequential amendment
	11. Amendments to Securities Act 1978
	12. Amendment to Summary Proceedings Act 1957

A BILL INTITULED

An Act to amend the Reserve Bank of New Zealand Act 1989

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

- 5 **1. Short Title**—This Act may be cited as the Reserve Bank of New Zealand Amendment Act (No. 2) 1994, 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).
- 10 **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

*1989, No. 157

Amendments: 1992, No. 32; 1993, No. 118

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: 5

“(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 or remove any condition of registration or add to any such conditions or remove any such conditions and substitute new conditions in their place. 10

“(3) The Bank shall not exercise a power referred to in subsection (2) of this section unless the registered bank is given notice in writing of the Bank’s intention to do so, has a reasonable opportunity to make submissions to the Bank, and the Bank has regard to those submissions.” 15

4. 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”. 20

5. Public disclosure of financial and other information by registered banks—The principal Act is hereby amended by repealing section 81, and substituting the following section:

“81. (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. 25

“(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. 30

“(3) Without limiting the information that may be prescribed, an Order in Council under subsection (1) of this section may prescribe information relating to— 35

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

“(b) Incorporation and ownership structure:

“(c) Financial and accounting systems and controls: 40

“(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:

5 “(h) Loan concentrations and risk exposures:

“(i) Liquidity:

“(j) Obligations and commitments including contingent liabilities:

“(k) Transactions with related parties:

10 “(l) Foreign exchange and interest rate exposures:

“(m) Pending proceedings and arbitrations:

“(n) Acquisitions.

“(4) An Order in Council under **subsection (1)** of this section may require a registered bank to disclose information
15 (including information relating to the matters referred to in **subsection (3)** of this section), in relation to a company that is its holding company, being information that is publicly available in the country in which the holding company is incorporated.

“(5) For the purposes of **paragraph (k)** of **subsection (3)** of this
20 section, the term ‘related party’, in relation to a registered bank and to a holding company of the bank, shall have the meaning given to it in the Order in Council under **subsection (1)** of this section.

“(6) Without limiting **subsection (1)** or **subsection (3)** of this
25 section, an Order in Council under **subsection (1)** of this section may—

“(a) Prescribe information that is required to be contained in
30 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:

35 “(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:

40 “(e) Require financial statements and information that are required to be published to be audited and to be accompanied by an auditor’s report.

“(7) Except for the purposes of **paragraph (k)** of **subsection (3)** 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.

“(8) For the purposes of **subsection (7)** 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 of the bank to whom it relates); or

“(b) The number of loans or risk exposures falling within a specified range of amounts—

is not publication of information relating to the affairs of a particular customer or client of a bank.

“(9) The Bank shall consult with the Securities Commission before it makes a recommendation under **subsection (1)** of this section.”

6. 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.

7. 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 person holding office as a director of the bank at the time of publication of the disclosure statement, 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.

5 “(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.

10 “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,—

15 “(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.

20 “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—

25 “(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

30 “(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

35 “(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.

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

8. 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”.

9. Exemption from Securities Act 1978—Section 181 of the principal Act is hereby amended by repealing subsection (8), and substituting the following subsection: 5

“(8) Section 5 of the Securities Act 1978 (as so amended) is hereby amended by inserting, after subsection (2B), the following subsection: 10

“(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.’”

10. Consequential amendment—Section 1 (2) of the principal Act is hereby amended by omitting the words “sections 85, 87 to 92, and”. 15

11. 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”. 20

(2) Section 2 (1) of the Securities Act 1978 is hereby further amended by inserting, in its appropriate alphabetical order, the following definition: 25

“‘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: 30

“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 by a registered bank, means an advertisement that— 35

“(a) Refers to the most recent 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 40

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.”

5 (4) 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:

10 “(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 by 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,
15 the Commission may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of securities.”

12. Amendment to Summary Proceedings Act 1957—

20 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
25	151	Destroying, altering, or concealing records”