

# House of Representatives

# Supplementary Order Paper

Tuesday, 19 November 2013

## Non-bank Deposit Takers Bill

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### *Proposed amendments*

Hon Bill English, in Committee, to move the following amendments:

#### *Clause 2*

Replace *clause 2(1) and (2)* (lines 2 to 5 on page 6) with:

- (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 (1A) and (3) of section 90** come into force on the date that is 1 year after the date on which **section 10** comes into force.

#### *Clause 4*

In *clause 4(1)*, definition of **subsidiary**, *paragraph (b)*, replace “defined in section 2(1) of the Financial Reporting Act 1993” (lines 3 and 4 on page 10) with “defined in section 5(1) of the Financial Reporting Act 2013”.

#### *Clause 5*

In *clause 5(1)(d)(i)*, replace “1999” (line 30 on page 12) with “1989”.

In *clause 5(1)(c) and (d)* (lines 23 to 35 on page 12), replace “this Act came into force” with “this section came into force” in each place.

*Clause 13*

In *clause 13(1)(a)*, replace “with this Act, the regulations,” (lines 5 and 6 on page 17) with “with this Act and the regulations (having regard to any exemptions granted or likely to be granted under **section 69**)”.

*Clause 24*

Replace *clause 24(2)(b)* (line 3 on page 24) with:

- (b) is not a director of a related party other than a related party that is a guaranteeing subsidiary; and

After *clause 24(2)* (after line 6 on page 24), insert:

- (3) A licensed NBDT that breaches this section commits an offence and is liable on conviction to a level 3 penalty.

*Clause 51*

In *clause 51(2)*, replace “A Judge of the High Court of New Zealand or a District Court Judge may issue a warrant to a Bank officer in relation to a place if the Judge” (lines 8 to 10 on page 39) with “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 50(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.”.

Replace *clause 51(3)* (lines 16 to 25 on page 39) with:

- (3) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.

*Clause 52*

In *clause 52(1)(b)*, replace “**section 50(1)(a)**; and” (line 36 on page 39) with “**section 50(1)(a)**.”

Delete *clause 52(1)(c)* (line 37 on page 39).

Delete *clause 52(6)(b)* (lines 31 to 33 on page 40).

In *clause 52(6)(c)*, delete “or a search warrant issued under **section 51**” (lines 37 and 38 on page 40).

*Clause 68*

In *clause 68*, replace “the limitation period in respect of an offence against this Act ends on the date that is” (lines 3 and 4 on page 54) with “a charging document in respect of an offence against this Act may be filed at any time within”.

*Clause 68A*

Delete *clause 68A* (lines 6 to 20 on page 54).

*Clause 70*

Replace *clause 70(2) to (4)* (line 29 on page 55 to line 7 on page 56) with:

- (2) An exemption that applies to a class of licensed NBDTs (a **class exemption**) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012

- and must be presented to the House of Representatives under section 41 of that Act.
- (3) An exemption that is not a class exemption is not a legislative instrument but is a disallowable instrument for the purposes of the Legislation Act 2012 and—
- (a) must be presented to the House of Representatives under section 41 of that Act; and
  - (b) must, as soon as practicable after it is granted,—
    - (i) be published on an Internet site maintained by or on behalf of the Bank; and
    - (ii) be notified in the *Gazette*; and
    - (iii) be made available in printed form on request by members of the public.
- (4) A notification in the *Gazette* for the purpose of **subsection (3)(b)(ii)** does not have to include the text of the exemption.

*Clause 72*

In *clause 72(1)(ca)*, delete “that meets the definition of NBDT in **section 5(1)(a), (c), or (d)**” (lines 33 and 34 on page 56).

In *clause 72(1)(ca)*, replace “such a” (line 36 on page 56) with “any”.

After *clause 72(1)(i)* (after line 14 on page 57), insert:

- (ia) prescribing information to be included in the register under **section 84(2A)(c)**:

*Clause 79*

Delete *clause 79(3)* (lines 1 to 5 on page 61).

*Clause 84*

After *clause 84(2)* (after line 18 on page 63), insert:

- (2A) 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 22** (unless the NBDT is not required to have such a rating); and
  - (c) any other prescribed information.

*Clause 86 and cross-heading*

Delete *clause 86* and the cross-heading above *clause 86* (lines 21 to 33 on page 64).

*Clause 87*

In *clause 87(1) and (2)* (lines 3 to 15 on page 65), replace “this Act comes into force” with “this section comes into force” in each place.

*Clause 88*

In *clause 88(1A)*, replace “as a regulation for the purposes of the Acts and Regulations Publications Act 1989” (lines 5 and 6 on page 66) with “in accordance with **section 70(2)**”.

In *clause 88(1B)*, replace “need not be treated as a regulation for the purposes of the Acts and Regulations Publications Act 1989” (lines 15 and 16 on page 66) with “must be treated in accordance with **section 70(3)**”.

*New clauses 93 to 101 and cross-headings*

After *clause 92* (after line 6 on page 68), insert:

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

**93 Principal Act amended**

**Sections 94 to 100** amend this Act.

**94 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 18(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 18(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”.

#### 95 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”.

#### 96 Determining applications for licence

**Section 13(2)(b)** is amended by inserting “the Financial Markets Conduct Act 2013,” after “requirements of”.

#### 97 Kinds of licence conditions and their effect

**Section 18(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:”.

**98 Grounds for cancelling licence**

**Section 20(b)** is amended by inserting “the Financial Markets Conduct Act 2013,” after “relevant provisions of”.

**99 Bank directions to licensed NBDTs and associated persons**

**Section 55(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”.

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

**Section 59(1)(a)(iii) and (2)(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***101 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*

In *Schedule 1*, replace *clauses 6 and 7* (line 31 on page 71 to line 9 on page 72) with:

**6 Application of Legislation Act 2012**

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in regulations.
- (2) Subpart 1 of Part 3 of the Legislation Act 2012 applies to a regulation that incorporates material by reference.
- (3) Despite section 41 of the Legislation Act 2012, material incorporated by reference in regulations need not be presented to the House of Representatives.

*Schedule 3*

Replace the item relating to the Search and Surveillance Act 2012 (line 23 on page 76 to line 20 on page 77) with:

**Search and Surveillance Act 2012 (2012 No 24)**

Schedule: insert in its appropriate alphabetical order:

Non-bank Deposit Takers Act <b>2011</b>	<b>51(1)</b>	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)
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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.

*New Schedule 4*

After *Schedule 3* (after page 80), insert:

**Schedule 4**

**s 101**

**Amendments relating to financial markets  
legislation**

**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 **2011**”.

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

“(f) the Non-bank Deposit Takers Act **2011**”.

Definition of **approved rating agency** in section 60(3): insert “, **section 85** of the Non-bank Deposit Takers Act **2011**,” 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 **2011**”.

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

“(g) the Non-bank Deposit Takers Act **2011**”.

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**Explanatory note**

This Supplementary Order Paper, which replaces Supplementary Order Paper No 99, amends the Non-bank Deposit Takers Bill. The amendments include—

- changing the commencement clause to provide that most of the Bill comes into force by Order in Council, with a back-stop date of 1 October 2017. This will allow the commencement to be aligned with the commencement of the Financial Markets Conduct Act 2013. Two minor amendments to

the Financial Service Providers (Registration and Dispute Resolution Act) 2008 come into force a year after *clause 10* (which imposes the licensing requirement on NBDTs) comes into force.

- updating a reference in *clause 4* and making technical corrections to *clause 5*:
- amending *clause 13* so that the Reserve Bank of New Zealand, when considering an application for a licence, must have regard to any exemptions granted, or likely to be granted, to the applicant for a licence:
- amending *clause 24* (which relates to governance requirements and the requirement for independent directors) in 2 respects. First, the definition of **independent director** is amended so that a director of a guaranteeing subsidiary is not prevented from being considered to be an independent director of the NBDT (a non-bank deposit taker). Secondly, the offence relating to non-compliance with the requirement for independent directors, which currently exists, is added. An NBDT is liable on conviction to a level 3 penalty (as defined in *clause 63*, ie, a fine not exceeding \$1 million):
- amending *clause 68* to align the wording more accurately with the Criminal Procedure Act 2011:
- deleting *clause 68A* because, as the Criminal Procedure Act 2011 is now in force, it is no longer necessary:
- amending *clause 70* to align the rules about the publication of exemptions with the Legislation Act 2012. It also replaces the requirement for non-class exemptions to be published in full in the *Gazette* with a requirement for those exemptions to be notified in the *Gazette*. These exemptions will continue to be published on an Internet site maintained by or on behalf of the Reserve Bank of New Zealand:
- amending *clause 72(1)(ca)* (which allows regulations to declare a person or class of persons as not being an NBDT) to remove an unnecessary reference to the definition of that term in *clause 5(1)*:
- amending *clause 84* (which relates to the register of licensed NBDTs) to prescribe some of the contents of the register, and amending *clause 72* to provide for regulations to be made prescribing further content:
- deleting *clause 86*, which provided for a review of the Act by 9 September 2013 (carrying forward a provision in the Reserve Bank of New Zealand Act 1989), because that date has already passed:
- a series of amendments relating to the coming into force of the Search and Surveillance Act 2012:
- other amendments reflecting the Legislation Act 2012:
- amendments relating to the Financial Markets Conduct Act 2013 (the **FMCA**). In summary,—
  - *new sections 93 to 100* will amend this Bill. These provisions will come into force when the main substantive parts of the FMCA come into force:



- the changes include inserting references to the FMCA and to the concepts of the FMCA. This includes replacing a reference in the definition of NBDT to an offer of debt securities to the public in New Zealand with a reference to an NBDT regulated offer. This new term means a regulated offer under the FMCA or an offer that would be a regulated offer if certain exclusions in Schedule 1 of the FMCA were not in force. These exclusions relate to persons who are wholesale investors by reason of investment activity or of being eligible investors as defined in that schedule. For transitional purposes, the term will also include an offer of debt securities to which the Securities Act 1978 applied (or continues to apply under the FMCA transitional provisions):
  - *clause 18* will be amended to allow licence conditions to be imposed where the governance requirements of the FMCA would not otherwise apply in relation to an NBDT. These conditions may include requirements to have a trustee and a trust deed for the debt securities:
  - *new section 101* and *Schedule 4* contain amendments to the FMCA and other financial markets legislation to take into account the enactment of this Bill.
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