IN-DEPTH

Banking Regulation

NEW ZEALAND

LEXOLOGY

Banking Regulation

EDITION 17

Contributing Editor

Jan Putnis

Slaughter and May

In-Depth: Banking Regulation (formerly The Banking Regulation Review) is an annual survey of the most important developments in banking regulation in the most significant jurisdictions worldwide. It provides high-level insight across the gamut of the legal and regulatory requirements applicable to banks, including prudential regulation, rules governing the conduct of business, funding, control and transfers of banking business and much more.

Generated: April 22, 2026

New Zealand

Guy Lethbridge and **Sarah DeSourdy-Hastings**
Russell McVeagh

Summary

Introduction

The New Zealand banking environment is characterised by a high level of ownership by foreign banks. Of the 27 banks currently registered in New Zealand, 12 operate as branches of overseas-incorporated banks. Of the 15 New Zealand-incorporated banks, 10 are foreign owned. Australian ownership is dominant, with the four major retail banks having the greatest market share (that is, the assets of each bank as a proportion of the total assets of the New Zealand banking system) being ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand and Westpac New Zealand Limited, all operated as New Zealand subsidiaries of Australian banks.

Year in review

New Zealand saw several notable developments over the course of 2025.

The new fair conduct regime created by the Financial Markets (Conduct of Institutions) Amendment Act 2022 came fully into force on 31 March 2025. The Act amended the Financial Markets Conduct Act 2013 to establish the new regime, which regulates the conduct of banks, non-bank deposit takers (NBDTs) and licensed insurers that provide relevant services.

The policy changes introduced by the Deposit Takers Act 2023 remained an area of focus in 2025. This Act is intended to replace the existing regulatory regimes for banks and NBDTs under the Banking (Prudential Supervision) Act 1989 and the Non-Bank Deposit Takers Act 2013, respectively. In particular, the Depositor Compensation Scheme (DCS) commenced on 1 July 2025. The DCS protects NZ$100,000 of eligible deposits per depositor, per licensed deposit taker, if a payout event is triggered. More generally, in the course of 2025, the Reserve Bank undertook further consultations in relation to the new prudential standards and regulations to be made under the Act.

Scrutiny of competition within the banking industry also remained an area of focus in 2025. Parliament's Finance and Expenditure Committee released its final report on its inquiry into banking competition in August 2025, following on from the release of the Commerce Commission's final report on its market study into personal banking services in 2024. A number of the developments in 2025 related to competition and the recommendations in these reports:

1. the Reserve Bank published a framework to assess the impacts of its policy proposals on competition in October 2025;
2. open banking progressed, becoming fully operationalised by the four major retail banks by December 2025 under the Customer and Product Data Act 2025; and
3. the Reserve Bank reviewed its key capital settings for deposit takers, announcing its final decisions in December 2025.

The regulatory regime applicable to banks

New Zealand has a twin peaks approach to the regulation of its financial system. The Reserve Bank of New Zealand has responsibility for prudential regulation of financial institutions (including banks). The Financial Markets Authority (FMA) has responsibility for the regulation of financial products (including securities and derivatives issued by financial institutions regulated by the Reserve Bank). NZX Limited operates the principal securities exchange in New Zealand, and regulates issuers and securities listed on its markets.

In New Zealand, banks are regulated in the following ways:

1. if an entity wishes to use the words "bank", "banker" or "banking" in its name, title or (in some situations) advertisements, the entity must be registered by the Reserve Bank under the Banking (Prudential Supervision) Act 1989 (BPS Act) and will be subject to ongoing prudential supervision by the Reserve Bank. Importantly, an entity is not required to be registered solely because it carries on banking activities; and
2. a bank will be regulated in relation to the activities that it undertakes and the services that it provides. The provision of particular services may be subject to specific regulation, particularly where services are provided to consumers. For example, issuing financial products (including securities and derivatives), providing financial adviser services to retail investors and providing credit to consumers are all subject to prescriptive regulatory regimes. The activities carried on by banks also make them subject to more general laws, such as anti-money laundering laws, laws countering the financing of terrorism, privacy laws and general fair trading laws.

The Reserve Bank's powers are conferred for the purposes of promoting the maintenance of a sound and efficient financial system and avoiding the significant damage that could result from the failure of a registered bank. Accordingly, when considering an application for registration, the Reserve Bank is concerned with ensuring that only financial institutions of appropriate standing and repute, and which will comply with the prudential requirements imposed on them, are able to become registered banks. In particular, the BPS Act requires the Reserve Bank to have regard to:

1. the incorporation and ownership structure of the applicant;
2. the size and nature of the applicant's business or proposed business, or any part of the applicant's business or proposed business;
3. the ability of the applicant to carry on its business or proposed business in a prudent manner;
4. the standing of the applicant in the financial markets;
5. the suitability of the directors and senior managers of the applicant for their respective positions;
6. the standing of the owner of the applicant in the financial markets; and
7. any other matters that may be prescribed in regulations.

If the application is by an overseas person or a subsidiary of an overseas person, the BPS Act also requires the Reserve Bank to have regard to:

1. the law and regulatory requirements of the applicant's home jurisdiction that relate to:
    - the disclosure by the applicant of financial and other information of the kind that a registered bank must disclose under the BPS Act;
    - the accounting and auditing standards applicable to the applicant;
    - the duties and powers of the directors of the applicant;
    - the licensing, registration, authorisation and supervision of the applicant; and
    - in the case of an application from an overseas person only, the recognition and priorities of claims of creditors or classes of creditors in the event of the insolvency of the applicant; and
2. the nature and extent of the financial and other information disclosed to the public by the applicant.

Registered banks typically operate in New Zealand as New Zealand-incorporated companies (often as subsidiaries of non-New Zealand banks) or as branches of non-New Zealand incorporated banks. There are also registered banks that are government-owned, a building society and a co-operative company. Although the Reserve Bank must have regard to the ownership and incorporation structure of an applicant for registration, the Reserve Bank does not ordinarily prescribe the legal form that the bank must take. Rather, the Reserve Bank is concerned with ensuring that the owners are incentivised to monitor the bank's activities closely, and to influence its behaviour in a way that will maintain or improve the bank's soundness, but that still retains sufficient separation between the board and its owners to ensure that, where the interests of the bank and its owners diverge, the directors of the bank act in the best interests of the bank.

In certain circumstances, however, the Reserve Bank will require a bank to operate through a New Zealand-incorporated company rather than a branch of an overseas bank. Those circumstances are where a bank is systemically important to New Zealand's economy, where the bank is proposing to take retail deposits in New Zealand and depositors or creditors in the bank's home jurisdiction are given a preferential claim in a winding up, or where the Reserve Bank considers that the disclosure or other supervisory requirements in the bank's home jurisdiction are inadequate.

The Reserve Bank itself is a statutory corporation, and it performs a number of roles in the New Zealand financial system in addition to the registration and prudential supervision of banks. For example, the Reserve Bank:

1. formulates and implements monetary policy (its primary statutory purpose);
2. operates as the central bank of New Zealand and issues New Zealand currency;
3. has oversight of certain payment and settlement systems;
4. manages and administers the DCS;
5.

is the prudential regulator of non-bank deposit takers (NBDTs) under the Non-Bank Deposit Takers Act 2013, including responsibility for granting licences to NBDTs;

6. is the prudential regulator of licensed insurers under the Insurance (Prudential Supervision) Act 2010;
7. is responsible for supervising banks, life insurers and NBDTs under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (although this role is expected to be moved to the Department of Internal Affairs in 2026); and
8. operates high-value payment and settlement and clearing systems.

As part of its prudential function, the Reserve Bank has a number of macro-prudential tools at its disposal to manage the system-wide risks that can develop during boom–bust financial cycles. These tools include the ability to require banks to hold additional buffer regulatory capital and to limit high loan-to-value residential (LVR) mortgage lending.

The Reserve Bank maintains relationships with other banking and financial system regulators, particularly in Australia. For example, it is represented on the Trans-Tasman Council on Banking Supervision (TTC), which supports the development of a single trans-Tasman economic market in banking services. The TTC also comprises representatives of the Australian and New Zealand Treasuries, the Reserve Bank of Australia, the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the FMA. The TTC is mandated to develop and promote measures that enhance trans-Tasman policy harmonisation, mutual recognition, information sharing and cooperation. Its work resulted in legislation in New Zealand and Australia requiring the Reserve Bank and APRA to support each other in meeting their statutory responsibilities relating to prudential regulation and financial system stability and, where reasonably practicable, to avoid actions likely to have a detrimental effect on the stability of the other country's financial system. The TTC members are signatories to a memorandum of cooperation setting out high-level principles that they will have regard to when dealing with trans-Tasman banking groups facing financial distress.

Prudential regulation

Relationship with the prudential regulator

The Reserve Bank's approach to bank supervision is based on three pillars: self-discipline, market discipline and regulatory discipline.[1]

The self-discipline pillar involves the Reserve Bank creating incentives for banks to maintain the systems and capacity to identify, measure, monitor and control their risks and maintain prudent operations. This is achieved by:

1. requiring high-quality, regular and timely financial public disclosure by banks in the form of disclosure statements;
2. requiring directors to sign attestations in their bank's public disclosure statements;
3.

not creating an impression that the Reserve Bank (rather than the banks themselves) has primary responsibility for the prudent management of banking risks; and

4. avoiding explicit or implicit government support for banks (although noting that the DCS recently came into force).

The market discipline pillar attempts to use market forces to reinforce the incentives for the prudent management of banks. This second pillar is based on the premise that an efficient and well-informed market will reward well-run banks (eg, through lower funding costs and better access to funding). This is principally achieved by the Reserve Bank maintaining a competitive banking system, and ensuring the market is well informed about a bank's financial performance.

The regulatory discipline pillar involves the Reserve Bank using regulatory and supervisory tools to reinforce incentives for banks to manage their risks prudently.

The Reserve Bank monitors all banks on an ongoing basis. Monitoring occurs principally through banks' twice-yearly disclosure statements. The Banking (Prudential Supervision) Act 1989 (BPS Act) also provides the Reserve Bank with extensive powers to obtain additional information, to have that information audited if required and to have a bank's affairs investigated.

Management of banks

When considering an application for registration as a bank, the Reserve Bank will consider the suitability for their positions of the directors and senior managers of the bank. This policy applies to both existing and proposed directors. It also applies, in the case of locally incorporated applicants, to the existing or proposed chief executive officer (CEO) and existing or proposed executives who report directly to the CEO and, in the case of overseas-incorporated applicants, to the existing or proposed chief executive of the New Zealand operations.

If a proposed director or senior manager has already passed a foreign banking regulator's suitability assessment, the Reserve Bank will usually accept that assessment as evidence of suitability.

A locally incorporated bank will be required to maintain adequate separation between the bank and its owners. This will require:

1. putting in place policies to monitor and limit exposures to related parties;
2. the company having a constitution that does not permit the directors to act in the interests of its holding company;
3. the size and composition of the board being such that it does not give rise to concerns about the bank's ability to pursue its own interests when those interests conflict with those of its shareholders; and
4. the bank having an audit committee (or other committee whose mandate includes audit matters) comprising non-executive directors, the majority of whom (including the chairperson) must be independent.

The Reserve Bank will generally require a locally incorporated bank to have at least five directors. The majority of the directors must be non-executive, and at least half are required to be independent. At least half of the independent directors must be ordinarily resident in New Zealand. The chairperson must also be independent. The Reserve Bank's criteria for a director to be independent are set out in the Reserve Bank's Corporate Governance (BS14) document.

The Reserve Bank must be supplied with a copy of the curriculum vitae of any potential director, CEO or executive who reports directly to the CEO of a locally incorporated bank, and the appointment of such a director, CEO or executive can only be made if the Reserve Bank has advised that it has no objection to the appointment.

Directors of banks (and the New Zealand CEO of an overseas bank) are required to sign bank disclosure statements, which include certain attestations by the directors. Attestations include that the directors believe, after due enquiry by them, that:

1. the bank has systems in place to monitor and adequately control the banking group's material risks, including credit risk, concentration of credit risk, interest rate risk, currency risk, equity risk, liquidity risk, operational risk and other business risks, and that those systems are being properly applied;
2. exposures to connected persons have not been contrary to the interests of the banking group (this applies to locally incorporated banks only); and
3. the bank has been complying with its conditions of registration.

In the full-year disclosure statement, a bank must also disclose the following (and address any changes to the composition of the bank's board in the half-year disclosure statement):

1. details of each director (including name, occupation, technical or professional qualifications, whether they are executive or independent, other directorships and any details of transactions that could materially influence a director in carrying out their duties). This information must also be disclosed in respect of the New Zealand CEO of an overseas bank;
2. whether there is a board audit committee (locally incorporated banks are required to have an audit committee or other committee that considers audit matters), and certain details of that committee; and
3. the board's policy for avoiding or handling conflicts of interest that may arise from directors' personal, professional or business interests.

In addition to the disclosure statements that are published twice-yearly by banks, the Reserve Bank publishes selected financial information for New Zealand banks side by side on what is known as the Dashboard. The Dashboard is updated quarterly with financial information that banks privately report to the Reserve Bank. The Dashboard approach aims to enhance market discipline by aggregating financial information in an accessible format that facilitates side-by-side comparison of banks based on key metrics.

Banks whose New Zealand liabilities, net of amounts due to related parties, exceed NZ$10 billion will also be subject to outsourcing conditions of registration:

1. The bank must comply with the Reserve Bank's Outsourcing Policy (BS11). The Outsourcing Policy requires the bank to have the legal and practical ability to control and execute outsourced functions. The policy is intended to minimise the impact of the failure of a large bank, or a service provider to a large bank, on the wider economy, and to preserve the available options if there is a large bank failure.
2. The bank must ensure that:
    - the business and affairs of the bank are managed by, or are under the direction or supervision of, the board of the bank;
    - the employment contract of the CEO or person in an equivalent position with the bank is determined by the board of the bank, and any decisions relating to the employment or termination of employment of that person are made by the board of the bank; and
    - all staff employed by the bank have their remuneration determined by the board or the CEO of the bank and are accountable (directly or indirectly) to the CEO of the bank.

No restrictions have been imposed by the Reserve Bank on bonus payments to management and employees of banks.

Regulatory capital and liquidity

In New Zealand, capital is currently divided into Common Equity Tier 1 capital, Additional Tier 1 capital and Tier 2 capital. Under the capital decisions made by the Reserve Bank in 2019, by the end of a seven-year transition period (which commenced in July 2022), banks will be required to hold total regulatory capital of at least 16% of their risk-weighted assets (or at least 18% in the case of domestic, systemically important banks). Of that regulatory capital, only 2% can be in the form of Tier 2 capital and only 2.5% can be in the form of Additional Tier 1 capital.

Since 1 October 2021, contingent capital instruments (that is, instruments that achieve loss absorption via conversion or write-off) have no longer been eligible as Additional Tier 1 or Tier 2 capital. Additional Tier 1 capital instruments must be in the form of redeemable non-cumulative perpetual preference shares. Tier 2 capital instruments consist of long-term subordinated debt.

However, the Reserve Bank reviewed its key capital settings for deposit takers in 2025, announcing its decisions in December 2025. The decisions include the removal of Additional Tier 1 capital instruments, the introduction of a requirement for additional loss absorbing capacity (LAC) instruments for the four major retail banks, and a reduction in some of the capital ratio requirements relative to the decisions made in 2019. The new capital ratio requirements and LAC requirements are expected to be implemented from December 2028.

A bank's capital requirements must be calculated using one of two approaches available under the Reserve Bank's capital adequacy framework. The first is the standardised approach, which uses external credit assessments produced by approved credit rating

agencies and is the default approach. The second is the internal ratings-based (IRB) approach, which permits a bank that has been accredited by the Reserve Bank to use its internal models to measure the risks of the bank's business. The risk-weighted asset outcomes for banks operating under the standardised approach and those operating under the IRB approach are closely aligned. Since 1 January 2022, banks accredited to use the IRB approach have been became subject to an 85% output floor. From 1 October 2022, the scalar for IRB banks increased from 1.06 to 1.2. The Reserve Bank's capital adequacy framework generally aligns with the Basel III global standards, but some departures were made to reflect New Zealand's circumstances. For example, the Reserve Bank has not introduced a leverage ratio for New Zealand banks, relying instead on its liquidity policy (discussed below). A bank must have a capital policy that takes into account any constraints on the bank's access to further capital, for instance if required in relation to an increase in business or an unexpected loss. In addition, a bank must satisfy the Reserve Bank that it has the capacity to implement and manage an internal capital adequacy assessment process that meets the requirements in the Reserve Bank's Capital Adequacy document (BPR100).

A branch of a bank incorporated overseas will have to demonstrate to the Reserve Bank that the global bank complies with adequate capital standards that are at least broadly comparable with those in New Zealand, and that it is subject to adequate supervision by the bank's home supervisor.

Banks must also comply with the Reserve Bank's Liquidity Policy (BS13). The Liquidity Policy requires banks to meet a minimum core funding ratio of 75%, ensuring that a high proportion of bank funding is met through retail deposits and term wholesale funding.

Recovery and resolution

The Reserve Bank's Open Bank Resolution (OBR) Pre-positioning Requirements Policy (BS17) applies to locally incorporated registered banks holding retail deposits in excess of NZ$1 billion (although other registered banks may opt in). The OBR is a tool for responding to a bank failure, allowing the bank to be open for full-scale or limited business on the next business day after being placed under statutory management. It is intended to provide an immediate and practical tool for responding to a bank failure.

The OBR policy places the cost of a failure in the first instance on shareholders, but also provides flexibility to assign losses to creditors without causing unnecessary disruption to the banking system and wider economy. If a statutory manager is appointed to a bank, the bank must close, and all accounts must be frozen to enable the bank's net asset deficiency to be determined. A haircut reflecting the bank's net asset deficiency plus a buffer is applied to all creditors' accounts, and funds equal to the amount of the haircut are frozen. The non-frozen funds are guaranteed by the government, and the bank is able to reopen for core transactions business. On the following day, haircuts are applied to other non-time sensitive liabilities to enable those liabilities also to be partially satisfied. If sufficient funds become available, the frozen funds can be released during the course of the statutory management.

Banks subject to the OBR policy must pre-position for OBR; this means having IT, payments, resource and process functionality in place ahead of a crisis so that, if a statutory manager

is appointed, access channels can be closed, funds can be frozen and access channels can be reopened for business by no later than 9am the next business day.

Conduct of business

The rules governing New Zealand banks' conduct of business are found in a range of statutes. These include the following:

1. the Financial Markets Conduct Act 2013: this Act regulates how financial products are created, promoted and sold, and the ongoing responsibilities of those who offer, deal and trade in them. The Financial Markets Conduct Act regulates registered banks in the following ways:
    - fair dealing: the Act sets out core standards of behaviour that those operating in the financial markets must comply with. It imposes fair dealing requirements on persons acting in trade in relation to financial products and financial services by prohibiting misleading or deceptive conduct, and prohibiting false, misleading or unsubstantiated representations about certain matters relating to financial products and financial services or in connection with dealings in, or the supply or promotion of, those products or services;
    - disclosure of offers of financial products: the Act requires issuers to prepare a product disclosure statement and a register entry tailored to retail investors for regulated offers. There are a number of exclusions from offers being regulated offers that are available to registered banks, including for certain simple debt products. The disclosure regime also expressly applies to certain offers of derivatives;
    - licensing of financial market services: the Act requires providers of certain financial market services to be licensed. Any person acting as a derivatives issuer in respect of a regulated offer of derivatives must apply for a licence from the Financial Markets Authority (FMA);
    - conduct of financial institutions: the fair conduct regime is centred around an overarching fair conduct principle. Financial institutions that provide relevant services and associated products to consumers in New Zealand are required to hold a licence and to have established and implemented a 'fair conduct programme' to operationalise the fair conduct principle. They must also comply with regulations regarding incentives;
    - financial and climate reporting: the Act sets out financial reporting requirements, including for registered banks, which include keeping proper accounting records and lodging audited financial statements on a public register. Large registered banks and other registered banks having quoted securities are required to lodge climate-related disclosures in addition to financial reporting, in relation to financial years commencing on or after 1 January 2023; and
    - financial advisers: financial advice providers (being any person carrying on a business of giving financial advice) must be licensed by the FMA to give

advice to retail clients. Any person giving financial advice on behalf of a financial advice provider must be either engaged (employed or otherwise) by a financial advice provider or registered as a financial adviser under the Financial Services Providers (Registration Disputes Resolution) Act 2008. The regime also imposes conduct and competence requirements for all those giving advice (both firms and individuals);

2. the Credit Contracts and Consumer Finance Act 2003: this Act principally regulates the provision of credit products to consumers. It prescribes a disclosure regime and regulates specific aspects of consumer credit products, such as prohibiting the charging of unreasonable credit fees. It also requires lenders to comply with responsible lending principles in relation to their consumer lending;
3. the Financial Service Providers (Registration and Dispute Resolution) Act 2008: this Act creates a register of entities that provide financial services. New Zealand banks are required to register as financial service providers and be members of an approved dispute resolution scheme in respect of services provided to retail customers;
4. the Anti-Money Laundering and Countering Financing of Terrorism Act 2009: this Act places obligations on reporting entities (including financial institutions) to detect and deter money laundering and the financing of terrorism. The compliance of banks, life insurers and non-bank deposit takers (NBDTs) under the regime is currently supervised by the Reserve Bank, legislation to move this role to the Department of Internal Affairs is expected to be passed in early 2026. The key tools used by the Reserve Bank to monitor compliance are on-site inspections, desk-based reviews and thematic surveys. Under this regime, reporting entities (including registered banks) must:
    - assess the money-laundering and terrorism-financing risks they may reasonably expect to face;
    - implement a compliance programme to detect, manage and mitigate those risks;
    - carry out appropriate customer due diligence;
    - report suspicious activities; and
    - maintain robust record-keeping;
5. the Privacy Act 2020: this Act regulates the collection, retention, use and disclosure of personal information relating to individuals, including the disclosure of personal information to overseas persons; and
6. the Fair Trading Act 1986: this Act prohibits misleading or deceptive conduct in trade. Conduct in trade includes the marketing and sale of any financial products or services. This Act also contains provisions effectively prohibiting the inclusion of unfair contract terms in standard form contracts.

Each of these statutes includes a comprehensive enforcement regime. In most cases, if a bank is in breach of the relevant act, both the bank and its directors (and often others) can be subject to both civil and criminal liability provisions. In addition to the statutory rules,

registered banks are subject to certain common law rules, such as the banker's duty of confidentiality (which, unlike the Privacy Act, is not limited to individuals).

Registered banks have the opportunity for self-regulation through membership of the New Zealand Banking Association (NZBA). The NZBA is a forum for member banks to work together on a cooperative basis. One of the NZBA's key contributions to self-regulation of the New Zealand banking industry has been its development of the Code of Banking Practice, which sets out minimum standards of good banking practices for member banks. Membership is open to any New Zealand-registered bank. Currently, 17 banks are members of the NZBA.

Banks may also elect to participate in the Banking Ombudsman scheme, which is a free and independent dispute resolution service established to assist people in resolving complaints made against participating banks. The Banking Ombudsman scheme is an approved dispute resolution scheme for the purposes of the Financial Service Providers Act.

The primary purpose of the Banking Ombudsman is to review and recommend ways to resolve disputes that remain unresolved after consideration by a participating bank's internal complaints procedures. Where appropriate, the Banking Ombudsman may also refer complaints to other organisations, such as the Insurance and Savings Ombudsman, the Privacy Commissioner or the Human Rights Commissioner.

Funding

Banks typically fund their activities through retail term deposits and the offshore wholesale markets.

The Banking (Prudential Supervision) Act 1989 (BPS Act) includes a formal regulatory framework to support the issuance of covered bonds by New Zealand banks. Under this regime, banks may only issue covered bonds under a covered bond programme that has been registered with the Reserve Bank. A programme can only be registered if it meets certain requirements, including that the cover pool assets are held by a special purpose vehicle that meets the specified requirements; a cover pool monitor has been appointed to monitor the programme; and the programme documentation meets certain requirements (eg, administrative requirements in relation to the cover pool assets and testing to ensure sufficient assets are held in the cover pool).

The BPS Act covered bond framework provides legal certainty regarding the effect on the covered bond guarantor and the cover pool assets if a statutory manager is appointed to a bank. The framework also provides greater transparency of covered bond issuance and minimum standards of monitoring.

The Reserve Bank also limits the amount of covered bonds a bank may issue via the bank's conditions of registration. The Reserve Bank considers a limit to be necessary to balance the benefits of covered bond issuance against the potential adverse impact on unsecured creditors. The limit is currently set at 10% of a bank's total assets.

The amount of funding that can be provided by Australian-owned parents of banks is restricted by APS 222. APS 222 is a prudential standard issued by the Australian banking

regulator that aims to ensure that Australian banks are not exposed to excessive risk as a result of their associations and dealings with related entities, such as their New Zealand-incorporated subsidiaries. APS 222 requires each Australian bank to monitor contagion risk between itself and other members of its group to adhere to prudential limits on intra-group exposures.

Control of banks and transfers of banking business

Control regime

The Reserve Bank does not seek to regulate the owners of registered banks other than, in the course of considering an application for registration, having regard to the ownership structure of the applicant and the standing of the applicant's owners in the financial markets.

As discussed earlier, the Reserve Bank is concerned with ensuring that the ownership structure of an applicant incentivises the owners of the bank to monitor the bank's activities closely, and to influence its behaviour in a way that will maintain or improve the bank's soundness while retaining sufficient separation between the board and its owners to ensure that, where the interests of the bank and its owners diverge, the directors of the bank act in the best interests of the bank.

The Reserve Bank considers that the standing of the applicant's owner is likely to have a significant impact on the standing of the applicant itself. Accordingly, an applicant for registration must provide the Reserve Bank with an outline of the parent company's main activities and areas of expertise, including a list of the jurisdictions in which it is operating, a list of the major shareholders of the parent company, and financial accounts for the parent company for the previous three years. The Reserve Bank will also seek the views of the regulator of the parent company in its home jurisdiction where relevant.

The prior written consent of the Reserve Bank is required if a person acquires or increases a significant influence in a registered bank other than a registered bank that is incorporated outside New Zealand or, if an unincorporated body, that has its head office or principal place of business outside New Zealand. A significant influence is:

1. the ability to directly or indirectly appoint 25% or more of the board of directors (or other persons exercising powers of management, however described) of the registered bank; or
2. a direct or indirect qualifying interest in 10% or more of the voting securities issued or allotted by the registered bank (the definition of qualifying interest is broad, and includes persons having legal or beneficial ownership of the voting securities, as well as lesser or indirect interests such as powers to exercise or control the exercise of voting rights attached to the security, or powers to acquire, dispose of or control the acquisition or disposal of the securities, in each case whether directly or by virtue of any trust, agreement, arrangement or understanding).

When considering an application for consent to an acquisition of or increase to a significant influence in a registered bank, the Reserve Bank will have regard to the same matters as when considering the ownership structure of an applicant and the standing of an applicant's owners in relation to an application for registration.

In addition, if the person acquiring or increasing the significant influence is an overseas person, the consent of the Overseas Investment Office (as delegated by the relevant ministers) may be required under the Overseas Investment Act 2005. To obtain consent under that Act, an applicant must demonstrate that the persons controlling the applicant satisfy certain character and capability test factors (or that any such factors that are established do not make them unsuitable). It is also possible for financial institutions to be designated by regulation as being strategically important businesses, in which case overseas investment consent can be declined if the transaction is contrary to New Zealand's national interest.

New Zealand's competition laws may also restrict changes of ownership of a registered bank.

In relation to New Zealand-incorporated banks, the Companies Act 1993 requires certain approvals to be obtained and procedures to be followed if a company (including a bank) provides financial assistance for the purpose of or in connection with the acquisition of shares issued by that company. If a bank provided credit support such as a guarantee or security in connection with acquisition finance obtained by a person acquiring or increasing a significant influence in that bank, that credit support would need to be approved as financial assistance.

Transfers of banking business

There are limited ways under New Zealand law in which a registered bank can transfer all or part of its business (including deposits and loan arrangements) to another entity without the consent of the affected customers.

The Companies Act 1993 allows the court, on the application of a company or any shareholder or creditor of a company, to order that a scheme of arrangement be binding on the company and other persons specified in an order (eg, customers). However, prior to making the final order, the court may make orders requiring meetings of affected persons such as creditors (which would include depositors) to be held for the purpose of obtaining the approval of those persons to the scheme of arrangement. Accordingly, while the consent of each customer may not be required, a certain level of approval from the affected persons would likely be required.

Although unlikely to occur frequently, legislation can be used to transfer or vest all or part of the business of an entity to or in another entity. This process was used in 2006 and 2011 to vest significant parts of the business of a registered bank operating in New Zealand as a branch of an offshore bank in a New Zealand-incorporated subsidiary of that bank. In both cases, the legislation was a private act of Parliament (that is, initiated by a person other than a member of Parliament).

The Reserve Bank has also identified that significant acquisitions, investments or business combinations by locally incorporated New Zealand banks have the potential to pose risks to the soundness of the financial system. The Reserve Bank imposes a condition of

registration on locally incorporated banks relating to significant acquisitions. The condition applies to acquisitions or business combinations for which either the total consideration is equal to or greater than 15% of the banking group's Tier 1 capital, or the value of the assets acquired is equal to or greater than 15% of the total assets of the banking group. The condition requires banks to notify the Reserve Bank of an intended acquisition or business combination before giving effect to it and, depending on the size of the acquisition, either to wait for a period of 10 working days to elapse during which the Reserve Bank can object to the transaction or (in the case of larger transactions) to obtain a notice of non-objection to the transaction from the Reserve Bank.

The rationale for having a notice of non-objection as opposed to other alternatives outlined by the bank (ie, prior approval or prior notification) is that the directors of the bank would retain responsibility for the decision on the acquisition, but that the Reserve Bank would have a tool to assess whether there are any risks to the soundness of the financial system that need to be considered.

Outlook and conclusions

The year 2026 will see further consultations in relation to the new prudential standards to be made under the Deposit Takers Act 2023. A focus within the banking industry will be on the implementation schedule and consultations on the capital standard arising out of the Reserve Bank's capital review and decisions in 2025. Open Banking will further progress in 2025 and is set to be fully operationalised by Kiwibank Limited, the largest New Zealand-owned retail bank, by December 2026.

Endnotes

1 Geof Mortlock, 'New Zealand's financial sector regulation' (2003), *Reserve Bank of New Zealand Bulletin*, 66(4), p. 5. ^ Back to section

Guy Lethbridge guy.lethbridge@russellmcveagh.com
Sarah DeSourdy-Hastings Sarah.DeSourdyHastings@russellmcveagh.com

Russell McVeagh

Read more from this firm on Lexology